

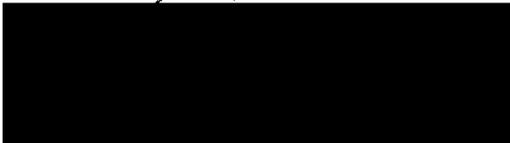


U.S. Department of Justice

Immigration and Naturalization Service

135

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



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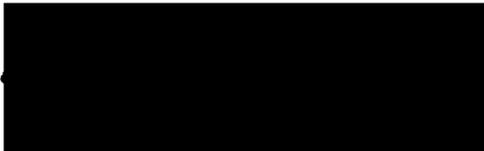
Date:

IN RE: Petitioner:  
Beneficiary:



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:



identification data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office which 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 which 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Mary C. Mulrean, Acting 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 computer software development firm. It seeks to employ the beneficiary permanently in the United States as a programmer analyst, 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 offered did not require a member of the professions holding an advanced degree.

On appeal, counsel for the petitioner asserts that the director misinterpreted the minimum educational requirements for the proffered position.

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 United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. The equivalent of an advanced degree is either a United States baccalaureate or foreign equivalent degree followed by at least five years of progressive experience in the specialty. 8 CFR 204.5(k)(2).

The beneficiary in this matter possesses a foreign degree equivalent to a Bachelor of Engineering in Computer Science and Engineering. The petitioner has also submitted evidence to establish that the beneficiary has more than five years of progressive experience as a programmer analyst. Consequently, he qualifies as an advanced degree professional.

The issue to be determined here 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. Blocks 14 and 15 of the ETA-750 Part A must establish that the position requires an employee with either a master's degree or a U.S. baccalaureate or foreign equivalent degree followed by at least five years of progressive experience in the specialty. 8 CFR 204.5(k)(4)(i).

The terms, "MA," "MS," "master's degree or equivalent" and "bachelor's degree with five years of progressive experience," all equate to the educational requirements of a member of the professions holding an advanced degree. The threshold for granting classification as an advanced degree professional will be satisfied when any of these terms appear in block 14.

It is also important that the ETA-750 be read as a whole. In particular, if the education requirement in block 14 includes an asterisk (\*) or other footnote, the information included in the note must be included in determining whether the educational requirement, as a whole, shows that an advanced degree or the equivalent is the minimum acceptable qualification for the position.

The record contains an individual labor certification, Form ETA-750, Application for Alien Employment Certification, which reflects the following:

Item 14: Education - Bachelor's in \*

Experience - 5 \*\* years in the job offered or 5 \*\* years in the related occupation of Software Engineer

Item 15: Other Special Requirements -

\* Computer Science, Information Systems, Accounting, Engineering (any field) or equivalent (such as a degree in another technical field and extensive computer science study)

\*\* [Deletion] experience developing RDBMS business systems

Master of Science in Computer Science or Information Systems will substitute for 2 years of experience.

The ETA-750 was certified by the Department of Labor for the position of "Data Base Design Analyst," with an occupational code of 039.162-014. It is also noted that the labor certification was amended by the petitioner to delete the term "Progressive" from block 15, so that the phrase "Progressive experience developing RDBMS business systems" was amended to read simply "experience developing RDBMS business systems." According to the double asterisks, the phrase in block 15 was provided to define the five years of experience required at block 14.

In her decision, the director found that the proposed position did not meet the minimum requirements of an advanced degree position, based on a review of the labor certification.

On appeal, counsel states that the "labor certification clearly shows that the position requires a Bachelor's degree plus five

years of software engineering experience, the equivalent of a Master of Science degree."

Counsel's assertions are not persuasive. Contrary to counsel's claim, "a Bachelor's degree plus five years of software engineering experience" does not necessarily equate a master's degree. To be considered the equivalent of an advanced degree, the required experience must be progressive and post-baccalaureate. Based on the description of the required experience in the ETA-750, it is not clear if the petitioner requires that the experience be post-baccalaureate. Furthermore, by specifically removing the requirement of progressively responsible experience, the petitioner nullified any claim that the position requires the equivalent of an advanced degree. The equivalent of an advanced degree is defined as a baccalaureate degree followed by at least five years of progressive experience in the specialty. 8 CFR 204.5(k)(2). Accordingly, the position cannot be found to require, at a minimum, a professional holding an advanced degree or its equivalent.

Although the petitioner has not established that the position requires a professional holding an advanced degree or the equivalent or an alien of exceptional ability, the petitioner is not precluded from using the approved labor certification for a third preference visa petition, in accordance with Section 203(b)(3) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. 1361. As the petitioner has not sustained that burden, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.