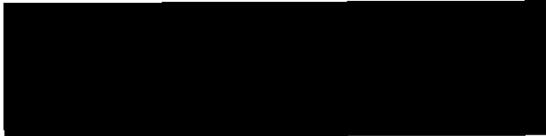




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U.S. Department of Justice
Immigration and Naturalization Service

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



Public Copy

File: WAC 01 047 50512

Office: CALIFORNIA SERVICE CENTER

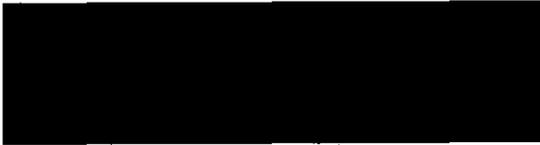
Date: JUN 11 2001

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:



Identifying 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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: : The preference visa petition was denied by the Director, California Service Center, and the appeal was dismissed by the Associate Commissioner for Examinations.¹ The matter is now before the Associate Commissioner on a motion to reopen and reconsider. The motion will be granted and the previous decisions of the director and the Associate Commissioner will be withdrawn. The petition will be approved.

The petitioner is a software services and products provider. It seeks to employ the beneficiary permanently in the United States as a software engineer 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 motion, counsel states that the Service 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 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 CFR 204.5(k)(2).

The beneficiary in this matter possesses a foreign degree equivalent to a United States bachelor's degree in computer science. The petitioner also submitted evidence to demonstrate that the beneficiary has more than five years of progressive experience as a software engineer. Consequently, he qualifies as an advanced degree professional.

The issue to be determined here is whether this particular software engineer 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.

¹ The current petition (WAC 01 047 50512) was reconstructed and substituted for the original petition (WAC 99 071 51546), after the director was unable to locate the original record of proceeding.

It is also important that the [REDACTED] 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 ETA-750 Part A contained in the record reflects the following:

- Item 14: Education – M.S. or B.S.* in computer science or related field.
Experience – 3 or 5* years in the job offered.
- Item 15: *Positions require Master of Science degree in Computer Science or a related field and three (3) years of software engineering experience, OR a Bachelor of Science degree in Computer Science or a related field and five (5) years software engineering experience.

This experience must include: 1) object-oriented design and development; and, 2) C++.

In this matter, block 14 includes an asterisk following "B.S." that refers to five years experience and to block 15. At block 15, it is apparent that the employer will consider a candidate with a "Bachelor's of Science degree in Computer Science or a related field and five (5) years of software engineering experience." The experience required is in the job offered, the duties of which are described at block 13 of the [REDACTED] [d]efine, design, develop and implement open standards based network management protocols for large network management systems. Utilize object-oriented design and development in C++ to provide access to the protocols through distributed objects. Design and develop interoperability tests."

One may reasonably infer that five years of experience as a computer software engineer performing these duties would necessarily be progressive, due to the highly technical nature of the work and the rate of change in the computer field. The determination to approve the petition would have been made simpler if the petitioner had required "progressive" experience on the labor certification, but the petitioner's failure to use that word may be excused in this case, where the nature of the work to be performed is inherently progressive. 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 met that burden.

ORDER: The decision of the Associate Commissioner dated August 6, 1999 is withdrawn. The decision of the director dated March 26, 1999 is withdrawn. The petition is approved.