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U.S. Department of Justice
Immigration and Naturalization Service

Identification date omitted in
several places throughout
petition of [redacted] directly

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



File: WAC 99 146 52584 Office: California Service Center Date: 18 APR 2002

IN RE: Petitioner: [redacted]
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

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,
EXAMNATIONS

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 The decision of the director will be withdrawn, the appeal will be sustained, and the petition will be approved.

The petitioner is a developer of client/server and object-oriented software. It seeks to employ the beneficiary permanently in the United States as senior consultant 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 states the proffered position requires an advanced degree professional.

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).

According to an evaluation report contained in the record, the beneficiary possesses an M.S. degree in Electrical Engineering from Southern Illinois University. Therefore, the beneficiary qualifies as a member of the professions holding an advanced degree. 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 form contains addenda or clarifications regarding the education requirement in block 14, all of the pertinent information 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 – B.S. or foreign equivalent

Major Field of Study – Computer Science, Computer Engineering, Electrical Engineering or a related field

Experience – 5 years in occupation of Software Development, Systems Engineer/Programmer or related occupation

Item 15: “Will also accept an M.S. or foreign equiv. in C.S./C.E./E.E. or rel. and 3 years of related experience.”

In this matter, block 15 includes what is clearly an addendum to the information in block 14. Taken together, blocks 14 and 15 indicate that the position requires either a master’s degree plus three years of experience, or a bachelor’s degree plus five years of experience (which is the regulatory equivalent of a master’s degree). Five years of experience in the occupation described would necessarily be progressive, due to the highly technical nature and the rate of change in the computer field.

The determination to approve the petition would have been made simpler if the petitioner had listed the master’s degree in the education block, listing the bachelor’s degree as an alternative, instead of vice versa, thus showing the master’s degree more prominently than the equivalent. Nevertheless, we concur with counsel that the relative locations of these data on the labor certification does not change the basic finding that the position requires either a master’s degree or its equivalent (a bachelor’s degree and five years of experience). This position, at a minimum, requires a professional holding an advanced degree or its equivalent.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.