



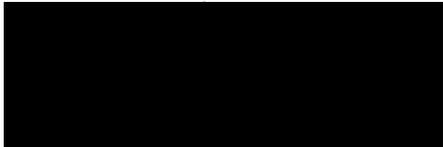
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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
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Washington, D.C. 20536



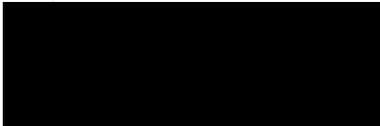
File: [Redacted] Office: Vermont Service Center

Date: AUG 29 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,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont 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 computer consulting company. It seeks to employ the beneficiary permanently in the United States as a database administrator 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 position does not require a member of the professions holding an advanced degree, and that the beneficiary does not qualify as a member of the professions holding an advanced degree.

On appeal, counsel maintains that the position sought by the beneficiary meets the requirements of the pertinent visa classification, and that the beneficiary qualifies for that 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 C.F.R. 204.5(k)(2).

The issues to be determined here are whether this particular position requires a member of the professions holding an advanced degree or its equivalent, and whether the beneficiary qualifies for that immigrant classification. 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 C.F.R. 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.

Block 14 on the ETA-750 Part A contained in the record contains the following information:

Education – "Bachelor"

Major Field of Study – "Computer Science or Engineering"

Experience – Five years in the job offered or in the related occupation of "Programmer/Analyst"



In denying the petition, the director stated:

The job being offered . . . does not appear to require the beneficiary to obtain a minimum of a Master's degree or its equivalent. . . .

The evidence has not shown that a combination of education and experience is equivalent to a Master's degree in the specific specialized area. . . .

[I]t does not appear that the beneficiary has obtained a Master's degree or its equivalent, or that the job requires the beneficiary to have obtained a minimum of a Master's degree or its equivalent.

The director arrived at this conclusion because the evidence of record does not specifically refer to the beneficiary's six years of post-baccalaureate experience as "progressive."

Five years of experience as a programmer/analyst or database administrator 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 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 an advanced degree or its equivalent.

The petitioner has satisfactorily shown that this position, at a minimum, requires a professional holding the equivalent of an advanced degree, and that the beneficiary qualifies as a member of the professions 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 director dated February 10, 2000 is withdrawn. The appeal is sustained and the petition is approved.