



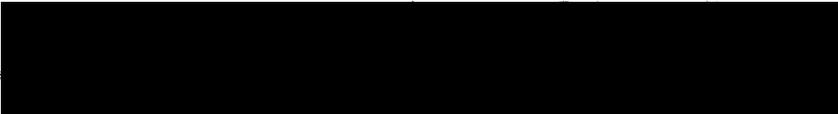
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U.S. Department of Justice

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

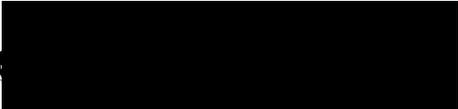


File: WAC 99 143 51672 Office: CALIFORNIA SERVICE CENTER Date: 03 DEC 2002

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:



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, 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 college of traditional Oriental medicine. It seeks to employ the beneficiary permanently in the United States as its Korean program coordinator and academic advisor 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 petitioner has not shown that the beneficiary holds a United States master's degree.

On appeal, counsel asserts that the beneficiary holds a U.S. master's degree, granted by the petitioner.

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. 8 C.F.R. 204.5(k)(2).

The beneficiary holds the degree of Master of Traditional Oriental Medicine, conferred by the petitioning institution in March 1996. The director, apparently noting the Asian characters printed on the beneficiary's diploma, instructed the petitioner to submit documentation showing that this degree is equivalent to a degree from a U.S. institution. The director appears not to have noticed that the degree-granting institution is in fact the petitioner, or that the diploma containing the Asian characters also states that the degree was conferred in Santa Monica, California. The director subsequently denied the petition, citing the petitioner's failure to submit an evaluation of the degree.

While the petitioner is not a regionally accredited college or university, it is approved by the California Postsecondary Education Commission and thus it is fully authorized by a competent state authority to grant advanced degrees. Neither the pertinent statute nor the applicable regulations, at this time, distinguish between regionally accredited and state-approved institutions.

The record, on its face, refutes the director's finding that the beneficiary's degree "has not been evaluated and determined to be the equivalent of an advanced degree in the United States." The record clearly shows that the beneficiary's master's degree was conferred not by any foreign institution, but by the petitioner, which is a state-approved degree-granting institution in the United States. The sole basis for the denial, therefore, rests on an apparent factual error, and the denial decision contains no valid grounds for denial of the petition.

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 October 19, 2000 is withdrawn. The appeal is sustained and the petition is approved.