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U.S. Department of Justice

Immigration and Naturalization Service

**PUBLIC COPY**

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



File: [Redacted]

Office: Nebraska Service Center

Date: 06 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:  
[Redacted]

*Identifying information to prevent identity and prevent invasion of personal privacy*

**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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks to employ the beneficiary as a software consultant. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the beneficiary does not qualify as an advanced degree professional.

On appeal, counsel argues that the beneficiary has the equivalent of an advanced degree.

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.

Matter of Sea, Inc., 19 I&N 817 (Commissioner 1988), provides:

This Service uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight.

The petitioner claims that the beneficiary has the equivalent of a Master's degree. The petitioner initially submitted the beneficiary's bachelor of engineering degree issued by Osmania University in June 1995, an "advanced diploma" issued by the National Institute of Information Technology (NIIT) in August 1995, a transcript from Wayne State University reflecting 23 credits as of December 1996 dated March 1997, and an evaluation of these degrees and credit hours by George Petrello, a Board Certified Forensic Examiner. Dr. Petrello concluded that the beneficiary had the equivalent of a bachelor's degree from an accredited U.S. university in June 1995 and the equivalent of a Master's degree from an accredited U.S. university in December 1996.

The director concluded that the beneficiary did not have a *degree* that was equivalent to a U.S. Master's degree. On appeal, counsel argues that the precedent decisions cited by the director, Matter of Katigbak, 14 I&N Dec. 45, 49 (Comm. 1971), and Matter of Sea, Inc., *supra*, do not preclude "additional probative evidence that the beneficiary's education provided the beneficiary with a knowledge base equivalent to the stated educational requirement." Counsel cites two non-precedent decisions issued by the Administrative Appeals Office (AAO) and an appeal of a Department of Labor decision purportedly for the proposition that the petitioner need only demonstrate that "the beneficiary meets the stated labor certification requirement if he has the required number of credits for the appropriate U.S. degree and the major field of study irrespective of whether the beneficiary had actually been awarded the degree itself." Further, counsel notes that the labor certificate permits the "academic equivalent" of a U.S. Master's degree.

8 C.F.R. 204.5(k)(2) provides that an advanced degree is “any United States academic or professional *degree* or a foreign equivalent *degree* above that of baccalaureate.” The regulation expressly permits only one substitution for that requirement, specifically, “a United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty.” As stated by the director, the petitioner does not claim that the beneficiary has five years of progressive post-baccalaureate experience. Therefore, the petitioner must demonstrate that the beneficiary has a *degree* that is equivalent to a U.S. academic or professional degree above a baccalaureate degree. A combination of credit hours which, when taken together, equals the same amount of coursework required for a U.S. Master’s degree does not meet the regulatory requirement of a foreign equivalent *degree*.

The AAO decisions provided by counsel do not support his arguments. First, these decisions, the most recent from 1991, are not precedents and thus, are not binding. Moreover, they are easily distinguished. The 1991 decision involved a third preference visa petition for a beneficiary whose receipt of his Master’s degree was simply delayed and who had a bachelor’s degree plus five years of experience. In the case before us, the beneficiary had not completed the requirements for a Master’s degree at Wayne State University at the time of filing. In fact, the petitioner has submitted no evidence that the beneficiary ever received a degree from Wayne State. Moreover, as stated above, the petitioner does not claim that the beneficiary in the case before us had five years of post-baccalaureate experience as of the date of filing. The 1969 AAO decision involved a physician who had completed his degree but not his internship. As stated above, the beneficiary in this case had not received a Master’s degree or a degree determined to be equivalent to a U.S. Master’s degree. The 1988 decision by an administrative law judge on a Department of Labor decision also involved an alien who had completed all the requirements for the degree at the time the labor certification application was filed, but had not yet received the degree. As stated above, the beneficiary in the case before us had not completed the requirements for a Master’s degree at Wayne State as of the date of filing and there is no evidence that he ever received this degree.

In light of the above, we concur with the director that that the beneficiary does not have the equivalent of a U.S. Master’s degree. Thus, the beneficiary is not an advanced degree professional as defined in the regulations regardless of whether he meets the job requirements of the labor certification.<sup>1</sup>

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

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> If we accept counsel’s argument that by including the words “academic equivalent” the labor certification application permits individuals without an advanced *degree* as defined in the regulations, then the job does not require an advanced degree professional.