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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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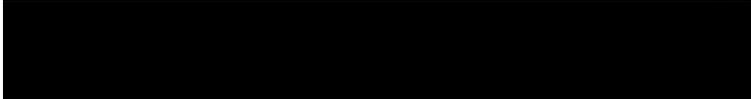


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Office: Vermont Service Center

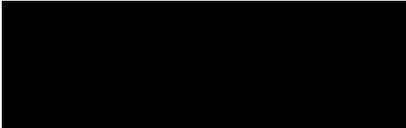
Date: JUL 18 2002

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:



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 employment-based immigrant 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 and the petition will be remanded for further action and consideration.

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 with the equivalent of an advanced degree. The petitioner, an information technology consulting firm, seeks to employ the beneficiary as a programmer/analyst. 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 beneficiary does not qualify as a member of the professions holding an advanced degree or its equivalent, and thus the beneficiary does not qualify for the job offered.

Section 203(b)(2)(A) of the Act states, in pertinent part, “[v]isas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees . . . whose services in the sciences, arts, professions, or business are sought by an employer in the United States.”

The Service's regulation at 8 C.F.R. 204.5(k)(3)(i) states:

To show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

- (A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

The petitioner does not claim that the beneficiary holds an actual advanced degree. Rather, the petitioner contends that the beneficiary possesses the equivalent of such a degree through a combination of education and subsequent experience. The beneficiary claims the following employment experience:

Claimed employment:

Programmer/analyst	Speck Systems, Ltd.	6/1992 – 6/1994
Application programmer	Kris Software Ltd.	6/1994 – 6/1996
Programmer/analyst	Fifth Generation Info World	6/1996 – 8/1997
Programmer/analyst	the petitioner	10/1997 – onward

Because the beneficiary began working for the petitioner in October 1997, the petitioner must show that the beneficiary had five years of post-baccalaureate experience as of the date that it hired him.

To verify the above claims of employment, the petitioner initially submitted letters from the companies that had employed the beneficiary. The letters from Speck Systems, Ltd. and Fifth Generation Info World affirm essentially the dates claimed above. A letter from Kris Software Ltd. confirms the beneficiary's employment there, but not the dates of employment.

The director denied the petition, stating that the petitioner had documented only three years and one month of qualifying experience, falling short of the required five years.

On appeal, the petitioner submits a new letter from Kris Software Ltd., verifying the beneficiary's employment there from June 1994 to June 1996, as claimed on the beneficiary's Form ETA-750B Statement of Qualifications. This letter overcomes the only stated ground of denial, and therefore the director's denial cannot stand.

Nevertheless, review of the record reveals two other issues that prevent us from approving the petition outright. The petitioner has not had an opportunity to address these issues. Because the petitioner has overcome the director's grounds for denial, the petitioner must now have an opportunity to address these issues.

The director, in denying the petition, had stated that the petitioner failed to "establish the beneficiary has a Master's degree with one-year experience or a Bachelor's degree with five years experience." The employment letters in the record document roughly five years and two months of employment. This experience, however, does not satisfy the minimum job offer requirement as stated on the Form ETA-750A labor certification. That document indicates that the position requires a master's degree in computer science/engineering or a related field, and "1+" years of experience. A notation on the form indicates that the petitioner "[w]ill accept Bachelors Degree with 5 years of progressive experience in lieu of Masters." In other words, a worker without a master's degree can qualify with a bachelor's degree and five years of progressive experience (in lieu of a master's degree) and "1+" years of additional experience. This experience requirement, separate from the education requirement, is not included in the equivalency statement.

The position, therefore, requires a bachelor's degree and over six years of experience. The beneficiary's five years and two months of experience fall short of this threshold. The director, in a request for further evidence, had informed the petitioner that "[t]he five years experience needed to show the equivalence of a United States [master's] degree cannot also be used to satisfy the one year experience requirement on the labor certification," but the director made no further mention of this issue in the denial. The director's reference to "has a Master's degree with one-year experience or a Bachelor's degree with five years experience" misleadingly implied that, by meeting either of those two requirements, the beneficiary's eligibility would be established. At no point has the petitioner shown that the one-year requirement did not exist when the petitioner hired the beneficiary, but that the beneficiary's job has evolved during his tenure and thus caused that additional requirement to appear.

The remaining issue, not addressed by the director, is whether the beneficiary holds a degree equivalent to a U.S. baccalaureate. The beneficiary, on his Form ETA-750B, claims to have earned a bachelor's degree in Computer Science at Osmania University, from June 1989 to May 1991, and then an "advanced diploma" from Streamline Computers, Ltd., from June 1991 to May 1992.

Documents from Osmania University do not indicate that the beneficiary's degree is in computer science. A certificate from the university lists three "optionals," in the following order: Mathematics, Physics, Computer Science. An independent evaluation submitted with the petition refers to the degree as a "Bachelor of Science in Mathematics." The evaluation further indicates that the beneficiary's work at Osmania University represents "a three year program of study transferable to a regionally accredited university in the United States." Thus, the beneficiary's diploma from Osmania University, on its own, is not equivalent to a U.S. baccalaureate, but rather three years of credit toward what is typically a four-year degree. The evaluator further attests that the Osmania University degree, in conjunction with the petitioner's added year of study at Streamline Computers, is "equivalent to the degree, Bachelor of Science in Mathematics with an additional concentration in Computer Science, from a regionally accredited university in the United States."

The above information does not indicate that the beneficiary holds any degree that is equivalent to a U.S. baccalaureate degree. The regulation at 8 C.F.R. 204.5(k)(3)(1)(B) requires "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree," rather than a combination or series of foreign degrees which, in the aggregate, amounts to the equivalent of a U.S. baccalaureate. Such a combination is not "a foreign equivalent degree" (emphasis added). While the regulations specify that a certain combination of experience and a bachelor's degree can be considered equivalent to a master's degree, there is no comparable provision for anything other than an actual baccalaureate degree to count toward the requirement for a baccalaureate degree. The fact that Osmania University uses the word "bachelor" in the name of its degree is without consequence, if that degree is not equivalent to a baccalaureate from a U.S. institution.

Therefore, this matter will be remanded so that the director may issue a new decision, taking the above factors into account. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for Examinations for review.