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U.S. Department of Justice
Immigration and Naturalization Service

**Id. Any data deleted to
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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

File: [Redacted] Office: Texas Service Center Date: JUL 19 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]

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, Texas Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a provider of technical services to the U.S. government. It seeks to employ the beneficiary permanently in the United States as a database 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 position does not require a member of the professions holding an advanced degree, and that the beneficiary does not meet the minimum job requirements set forth on the labor certification.

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 the position. Counsel argues that the director has misinterpreted the information stated on the labor certification.

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 first issue to consider is whether the position requires a member of the professions holding an advanced degree or its equivalent. Part A of the labor certification, Form ETA-750, describes the terms and conditions of the job offered. Blocks 14 and 15 of the ETA-750 Part A set forth the education, training, experience, and other special requirements of the position. To qualify for the classification that the petitioner seeks, this information 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:

College Degree Required: "MASTER'S"

Major Field of Study – "Computer Science"

Experience:

Job Offered – "3*" years

Related Occupation ("Systems Engineer/Administrator") – "3*" years

The asterisks refer to this footnoted assertion: "Bachelor's degree plus five years experience as a Systems Engineer/Administrator may be substituted in lieu of a Master's degree and three years experience."

In denying the petition, the director stated "[a]ccording to I.N.S. policy, [the stated requirements do] not establish that the position requires an advanced degree." The director offered no explanation for this finding, nor has the director cited the specific source of the "I.N.S. Policy." The labor certification states that the position requires a master's degree or a bachelor's degree plus five years of experience. The decision contains no defensible basis for the director's conclusion that the position does not require an advanced degree or its regulatory equivalent. The petitioner has satisfactorily shown that this position, at a minimum, requires a professional holding the equivalent of an advanced degree.

The remaining issue is whether the petitioner qualifies for the position. In this regard, the director has stated:

Part A of the ETA-750, Application for Alien Employment Certification, indicates the position requires a Master's Degree in Science plus 3 years experience in the job offered *and* 3 years experience in a related occupation (a total of 6 years experience). That has been modified to state that a Bachelor's degree plus five years experience as a Systems Engineer/Administrator may be substituted *in lieu of a Master's degree and three years experience.*

So, according to the certified ETA-750, an alien would have to have a Master's degree and 6 years experience or a Baccalaureate degree and 8 years experience. (BS + 5 years experience + 3 years experience. The BS + 5 years experience is substituted for an MS + 3 years experience, leaving 3 more years experience requirement).

(Emphasis in original.) The beneficiary does not hold a master's degree, and therefore, according to the director, the petitioner must show that the beneficiary has eight years of post-baccalaureate experience. The director calculated from the available evidence that "the maximum experience [the beneficiary] could have would be 6 years and 2 months," which falls short by nearly two years.

On appeal, counsel argues that the position requires "a Master's degree and 3 years experience in the job offered *or* (not and) 3 years experience in a related occupation. A BS and five years experience will be accepted in lieu of the Master's and 3 (not 6)." To support this argument, the petitioner submits a letter from the Department of Labor certifying officer who had approved the beneficiary's labor certification. That officer states "there is an understood 'or' on the experience

section and that the experience section is read . . . as '3 years in the job offered or 3 years in a related occupation,' not '3 years in the job offered and 3 years in a related occupation.'" Considering that the certifying officer with jurisdiction over the ETA-750 has given us this unambiguous interpretation of the form, there is no justification for the Service to adopt a competing interpretation. We agree with the Department of Labor that the configuration of the Form ETA-750 Part A implies an "or" rather than an "and" with regard to the two experience sections of that form.

The Form ETA-750 Part A indicates that the petitioning employer will accept a bachelor's degree plus five years of relevant experience, in lieu of a master's degree plus three years of relevant experience. The beneficiary possesses the necessary education and experience, and therefore he qualifies for the position. The position, in turn, clearly requires a member of the professions holding an advanced degree or its regulatory equivalent.

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 August 17, 2000¹ is withdrawn. The appeal is sustained and the petition is approved.

¹ As counsel notes on appeal, the August 17, 2000 date on the decision is plainly erroneous. The application for labor certification was not even filed until a week after that date, and the Form I-140 visa petition was submitted on February 10, 2001. The misdated decision was actually issued on January 8, 2002.