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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.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC 99 178 52556 Office: California Service Center Date: 11 MAR 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 which 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 which 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 which 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 approved by the Director, California Service Center, who certified the decision to the Associate Commissioner for Examinations for review. The decision of the director will be affirmed.

The petitioner is a company specializing in software development. It seeks to employ the beneficiary 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 job offered required a member of the professions holding the equivalent of an advanced degree.

Section 203(b)(2)(A) of the Act states, in pertinent part:

Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

The term "advanced degree" is defined as "any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree." 8 C.F.R. 204.5(k)(2).

Regarding labor certification, 8 C.F.R. 204.5(k)(4)(i) states in pertinent part:

Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor The job offer portion of the individual labor certification . . . must demonstrate that the job requires a professional holding an advanced degree or the equivalent or an alien of exceptional ability.

Upon review of the labor certification, the director determined that the petitioner required the equivalent of an advanced degree. The director noted that although the pertinent sections of the labor certification were written in an imprecise and confusing manner, the form could reasonably be interpreted to require "a Master's degree and 3 years of progressive experience or the equivalent of a Master's degree, which is a Bachelor of Science degree with 5 years of progressive experience."

After review of the evidence contained in the record, the decision of the director is found to be correct.

ORDER: The decision of the director is affirmed. The visa petition is approved.