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U.S. Department of Justice

Immigration and Naturalization Service

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

**PUBLIC COPY**



File: [Redacted]

Office: Nebraska Service Center

Date:

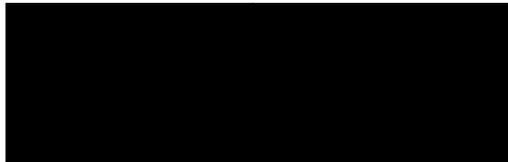
IN RE: Petitioner:  
Beneficiary:



04 NOV 2002

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:



*identifying data deleted to  
prevent disclosure of  
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 preference visa petition was denied by the Director, Nebraska 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 computer systems consultants, strategists, and implementers company. It seeks to employ the beneficiary permanently in the United States as a programmer analyst 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 meet the job requirements set forth on the labor certification.

On appeal, counsel argues that the beneficiary's baccalaureate degree and five years of progressive experience meet the requirements set forth 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 beneficiary's eligibility as a member of the professions with the equivalent of an advanced degree is not in dispute; the beneficiary holds a baccalaureate degree in a field relevant to the position sought plus five years of progressive experience. In addition, this particular position requires a member of the professions holding an advanced degree or its equivalent. The issue is whether the beneficiary meets the job requirements of the proffered job as set forth on the labor certification. The key to this determination is found on Form ETA-750 Part A. This section of the application for alien labor certification, "Offer of Employment," describes the terms and conditions of the job offered.

It is important that the ETA-750 be read as a whole. Block 14 on the ETA-750 Part A contained in the record contains the following information:

Education – "4" years of college; degree "Masters Degree or foreign equivalent."  
Major Field of Study – "Computer science or Management Information Systems."

Experience – "0" years in job offered.

In denying the petition, the director stated:

The ETA-750 indicates that a master's degree from the United States or a master's degree from a country other than the United States (foreign equivalent) is the minimum educational requirement. The ETA-750 does not indicate that a

bachelor's degree plus five years progressive experience would be acceptable as the minimum requirement for the position.

As the petitioner has not demonstrated that the beneficiary met the minimum requirements described on the ETA-750 at the time the ETA-750 was accepted by the Department of Labor, the beneficiary cannot be found to be qualified for the classification requested.

We agree with the director that the issue is whether the beneficiary, who is admittedly a member of the professions with the equivalent of an advanced degree, meets the job requirements as set forth on the labor certification. In addition, we acknowledge that the labor certification does not specify that a baccalaureate degree plus five years of experience is acceptable in place of a Master's degree. Nevertheless, the ETA-750 does state that only four years of college are required. As quoted above, 8 C.F.R. 204.5(k)(2) provides that a baccalaureate degree plus five progressive years of experience is equivalent to a Master's degree. Considering this information together, we conclude that the job requirements permit a baccalaureate degree plus five years of progressive experience in lieu of a Master's degree.

The petitioner has satisfactorily shown that the beneficiary meets the requirements of the proffered job set forth on the labor certification.

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 September 18, 2000, is withdrawn. The appeal is sustained and the petition is approved.