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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



NOV 12 2002

File:  Office: CALIFORNIA SERVICE CENTER Date:

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, California 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 submitted an approved labor certification from the Department of Labor. The director found that the position does not require a member of the professions holding an advanced degree, because the labor certification indicates that the petitioner will accept a bachelor's degree plus two years of experience "gained at any time" in lieu of a master's degree. By regulation, the equivalent of a master's degree is a baccalaureate plus five, not two, years of progressive experience, and that experience must be post-baccalaureate, rather than experience "gained at any time."

Review of Service records indicates that, concurrent with the filing of the instant petition, the petitioner filed another Form I-140 petition seeking a different immigrant classification on the alien's behalf. Service records further indicate that the second petition, receipt number WAC 00 144 50370, was approved on September 1, 2000. The alien subsequently filed a Form I-485 Application to Adjust Status, which was approved on January 15, 2002. Because the alien has adjusted to lawful permanent resident status, further pursuit of the matter at hand is moot.

Also, pursuant to Matter of Harry Bailen Builders, 19 I&N 412 (Commr. 1986), the job opportunity is considered filled once the alien immigrates based on a labor certification. Because the beneficiary has already adjusted status based on a petition arising from the labor certification obtained by the petitioner, the same labor certification cannot be used again in conjunction with this petition or any future petition.

**ORDER:** The appeal is dismissed, based on the alien's lawful permanent resident status.