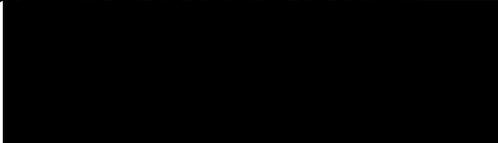




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U.S. Department of Justice
Immigration and Naturalization Service

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

File: EAC 99 248 53824 Office: Vermont Service Center

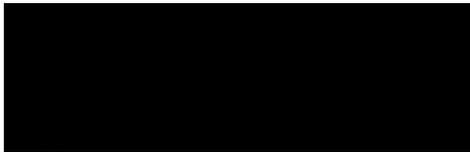
Date: OCT 29 2002

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 appeal will be dismissed.

The petitioner is a computer software development and consulting company. It seeks to employ the beneficiary permanently in the United States as a database administrator 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 did not possess "the equivalent of a master's degree." The director further noted that the beneficiary's work experience did not appear to be progressive and that the job offered did not require "the beneficiary to have obtained a master's degree or its equivalent."

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- 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 Service regulation at 8 C.F.R. 204.5(k)(2) states:

Advanced degree means 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. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

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

(i) 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 first issue to be determined in this matter is whether the beneficiary qualifies as an advanced degree professional. The petitioner submitted an evaluation report from Multinational Education and Information Services, Inc. The report offers the following analysis:

1. [The beneficiary] was awarded the degree of Bachelor of Science from Ranchi University, India in 1984. This is equivalent to a three-year program of academic studies in Botany and transferable to an accredited university in the United States...
2. (i) [The beneficiary] was awarded the degree of Master of Science from the Ranchi University, India in 1987. This is equivalent to a two-year program of academic studies in Botany and transferable to an accredited university in the United States. (ii) [The beneficiary] was awarded a diploma in Systems Management from the NIIT, India in 1990.

[The beneficiary's] three-year degree of Bachelor of Science and one year of his two years of the degree of Master of Science are equivalent to a bachelor degree in Botany from an accredited university in the United States. His remaining one year of the degree of Master of Science is equivalent to a [sic] one year of graduate studies in Botany from an accredited university in the United States.

The degree evaluation submitted implies that the beneficiary has the equivalent of a United States baccalaureate degree based on a combination of factors. This Service uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an opinion is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. See Matter of Sea, Inc., 19 I&N Dec. 817 (Comm., 1988).

The relevant regulations, cited above, require an official academic record of a bachelor's degree. While experience can substitute for an advanced degree, there is no comparable provision in regard to the underlying bachelor's degree. If the beneficiary does not actually hold a bachelor's degree (or an equivalent degree from a foreign institution), the beneficiary cannot qualify as a member of the professions holding an advanced degree, regardless of how many additional educational qualifications he has accumulated.

As stated in the regulations, the beneficiary must have a baccalaureate degree and five years of progressive experience in order to qualify as possessing the equivalent of an advanced degree. A bachelor's degree is generally found to require four years of education. See, e.g. Matter of Shah, 17 I&N Dec. 244, 245 (Comm. 1977). A beneficiary must first possess a foreign degree equivalent to a United States bachelor's degree in order to qualify for the visa classification based on a claim of a master's degree equivalency. Neither the statute nor the conforming regulations allow for alternatives to the requirement of the specific degree required on the Form ETA-750.

The ETA-750 Part A contained in the record reflects the following:

- Item 14: Education – 4 years of college, Bachelor’s Degree
Major Field of Study – Computer Science, Comp. Engineering or Related
- Experience - 5 years in the job offered or 5 years in a related occupation
Related Occupation – Programmer Analyst; System Analyst; Database Support
- Item 15: None

We also note that, according to the documentation provided, the beneficiary does not meet the educational requirements specified in Item 14 of the ETA-750. The beneficiary’s major field of study while pursuing his academic degrees in India from 1981 to 1987 was Botany, not Computer Science or Engineering. It is not apparent how the study of Botany relates in any way to Computer Science or Computer Engineering. Therefore, even if the beneficiary were found to have a foreign degree equivalent to a United States baccalaureate, his major field of study, Botany, would not comply with Item 14 of the Form ETA-750. We further note that the beneficiary’s “post graduate diploma” in “Programming and System Design” (June 1989 to July 1990) from the National Institute of Information Technology in India reflects only one year of education related to Computer Science or Computer Engineering. Therefore, the beneficiary’s education cannot meet the educational requirements specified in Item 14.

The remaining issue to be determined is whether this particular software engineer position requires a member of the professions holding an advanced degree or its equivalent. This issue is moot, however, because the beneficiary does not qualify as an advanced degree professional. For purpose of thoroughness, we will briefly consider the other issues raised in the director’s denial. We disagree with the director’s findings that the beneficiary’s work experience did not appear to be progressive and that the job offered did not require “the beneficiary to have obtained a master’s degree or its equivalent.” Based on a review of the job description provided in Item 13 of the Form ETA-750, one may reasonably infer that five years of experience in computer software development would necessarily be progressive, due to the highly technical nature of the field. Furthermore, the information provided in Item 14 of the ETA-750 clearly requires a bachelor’s degree plus five years of experience, which can be considered the equivalent of a master’s degree. The petitioner’s failure to use the word “progressive” here would not be automatically fatal to the petition, particularly when the nature of the work to be performed is inherently progressive.

The Service notes its authority to affirm decisions which, though based on incorrect grounds, are deemed to be correct decisions on other grounds within the power of the Service to formulate. Helvering v. Gowran, 302 U.S. 238 (1937); Securities Comm’n v. Chenery Corp., 318 U.S. 86 (1943); and Chae-Sik Lee v. Kennedy, 294 F.2d 231 (D.C. Cir. 1961), cert. denied, 368 U.S. 926 (1961).

In this case, we concur with the director's finding that the beneficiary did not possess "the equivalent of a master's degree" pursuant to the regulations. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.