

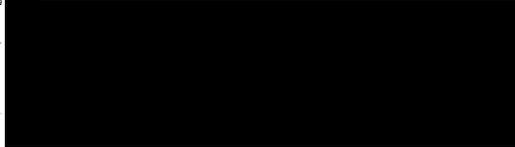


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: EAC 00 021 50830 Office: Vermont Service Center

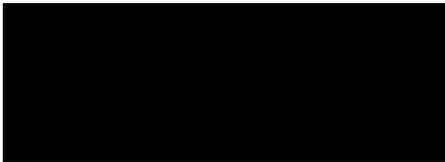
Date: OCT 29 2002

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 preference visa petition was denied by the Director, Vermont 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 company that provides software consulting services. It seeks to employ the beneficiary permanently in the United States as a senior 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 beneficiary's five years of progressive work experience had not been established and that the job offered did not require "the beneficiary to have obtained a Master's degree or its equivalent."

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 CFR 204.5(k)(2).

The first issue to be determined in this matter is whether the beneficiary qualifies as an advanced degree professional. The director acknowledged that the beneficiary possesses the foreign equivalent to a United States bachelor's degree in engineering, but found that the beneficiary's five years of progressive work experience had not been established. On appeal, counsel argues that the evidence provided by the petitioner is sufficient to demonstrate that the beneficiary has more than five years of progressive experience as a software engineer. Specifically, the petitioner has provided six letters from the beneficiary's former employers detailing his work experience as software engineer from 1986 to 1999. Due to the highly technical nature of the beneficiary's work and continual improvements in the computer field, we conclude that the beneficiary's previous software engineering experience was inherently progressive. We find that the letters from the beneficiary's former employers are sufficient to demonstrate that the beneficiary has at least five years of progressive post-baccalaureate experience as a software engineer. Consequently, the beneficiary qualifies as an advanced degree professional.

The remaining issue to be determined is whether this particular software engineering position requires a member of the professions holding an advanced degree or its equivalent. 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. Blocks 14 and 15 of the ETA-750 Part A 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 CFR 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.

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

Item 14: Education – Master’s **
Experience – 1 year in the job offered and one year in the related occupation of computer professional

Item 15: A) Windows 3.1, Windows 95, Windows 98, Windows NT, UNIX, HP-UX, IRIX, Sun OS
B) Visual C++, Visual C, C, C++, Visual Basic, Power Builder
C) JAVA, TCP/IP, HTML, MFC, CGI, PERL, ASP, COM/DCOM, Active X, MTS

** Will accept a Bachelor’s degree, or foreign equivalent, with five years of progressive experience as a computer professional, in lieu of Master’s. Degree in computer science/applications, engineering, chemistry, math or physics.

In this matter, block 14 includes a double asterisk, referencing information in block 15. At block 15, it is apparent that the employer specifically requires a bachelor’s degree in computer science or a related field, plus “five years of progressive experience as a computer professional.” When read as a whole, the ETA-750 clearly requires a bachelor’s degree with five years of progressive experience in the specialty, which is the equivalent of a master’s degree. Accordingly, this position, at a minimum, requires a professional holding the equivalent of an advanced degree.

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 January 11, 2001 is withdrawn. The appeal is sustained and the petition is approved.