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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

**PUBLIC COPY**

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536



File: [Redacted] Office: TEXAS SERVICE CENTER

Date: APR 15 2003

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)

ON BEHALF OF PETITIONER:



**identifying data deleted to  
prevent clearly unwarranted  
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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The matter is now before the Administrative Appeals Office 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, a university, seeks to employ the beneficiary as an assistant professor. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the beneficiary did not have the minimum qualifications listed on the ETA-750A as of the filing date of the labor certification application.

On appeal, counsel contends that the beneficiary had completed the coursework for his Ph.D. before the filing date of the labor certification application, notwithstanding that the degree was conferred after the filing date, and therefore qualifies for the immigrant visa classification.

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.

The regulation at 8 C.F.R. 204.5(k)(2) states:

An advanced degree is a U.S. 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.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt of the request for labor certification in the Department of Labor's employment service system. *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is December 1, 2000. The Application for Alien Employment Certification (Form ETA 750), states that the applicant for the position of assistant professor must have a "Ph.D." in "English, Literature, Humanities, South/Southeast Asian Studies, or a closely [sic]."

The record contains a copy of the beneficiary's degree from the University of California indicating that his Ph.D. in South and Southeast Asian Studies was conferred on December 21, 2000. The director denied the petition because the beneficiary had not been awarded his Ph.D. degree as of the filing date of the labor certification application. We concur.

The issue to be resolved is whether the beneficiary met the minimum requirements of the labor certification as of the priority date of the labor certification application. The ETA-750A in this case clearly requires a Ph.D. degree as the minimum education required.

Counsel asserts that the degree issued to the beneficiary by the University of California on December 21, 2000 is a technicality and that the petition should be approved because the beneficiary completed all of his doctoral coursework and completed his dissertation before the filing date of December 1, 2000. The petitioner submits a letter from a supervising member of the beneficiary's dissertation committee stating that the beneficiary had completed all course requirements including submission of his dissertation by November 15, 2000, and that the actual degree could not be issued until the graduation ceremony. Under established precedent, the applicant must have the education and experience specified on the labor certification as of the initial receipt date in the Department of Labor's employment service system. *Matter of Wing's Tea House, supra*. In this case, although the beneficiary may have fulfilled all educational requirements prior to December 1, 2000, he did not have his doctoral degree until December 21, 2000. Thus, he had not established that he was a qualified immigrant for the position sought as of the filing date of the petition. *See Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971).

The record indicates that the beneficiary received a master of arts in comparative literature in September 1992. Counsel contends that the beneficiary had already earned an advanced degree when he obtained the master's degree in 1992, and thus had the advanced degree prior to the filing date. Because the record does not establish whether a doctoral degree is customarily required by the specialty, we will not address the issue of whether the beneficiary would be required to have a U.S. doctorate or a foreign equivalent degree to meet the definition of "advanced degree" under the regulation at 8 C.F.R. § 204.5(k)(2). We note, however, that if a doctorate is customarily required as an entry level requirement for the specialty of "assistant professor" at a university, the beneficiary in this case would be required under the regulation to hold the doctoral degree to be considered an advanced degree professional. If this were the case, since the beneficiary clearly did not attain the degree until after the filing date of the labor certification application, he could not be a qualified immigrant who is a member of the professions holding an advanced degree under the statutory language of section 203(b)(2)(A).

Regardless of whether a doctoral degree is customarily required for the specialty, in this case as the beneficiary did not hold the minimum educational degree required by the labor certification as of the filing date of that application, he is not a qualified immigrant under section 203(b)(2)(A).

The burden of proof in these proceedings rests solely 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.

APPROVED AND FORWARDED:  
[Signature]  
[Title]  
[Date]