

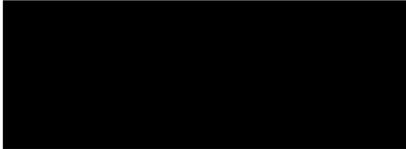
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U.S. Department of Homeland Security

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: EAC 02 103 50990 Office: VERMONT 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: SELF-REPRESENTED

**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, Vermont 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 is a software development company. It seeks to employ the beneficiary as a programmer analyst. 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 minimum requirements for the job offered.

On appeal, the petitioner submits additional evidence and contends that the beneficiary has sufficient training to satisfy the requirements of 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.

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 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 March 27, 2001. The Application for Alien Employment Certification (Form ETA 750), indicates that the applicant for the position of programmer analyst must have six years of college, a master's degree in computer science, and six years training in analysis programming.

The record establishes that the beneficiary is an advanced degree professional. The petitioner initially submitted the beneficiary's master of science diploma in computer science awarded May 27, 1999 from the Stevens Institute of Technology, a grade transcript with evidence of the beneficiary's 1996 bachelor's degree from Sardar Patel University, India, two reference letters, and a copy of one of the beneficiary's pay stubs.

The director requested additional evidence demonstrating that the petitioner had the ability to pay the proffered wage and evidence that the beneficiary had at least six years of training in analysis programming. The petitioner's response included documentation supporting its ability to pay and an

assertion that the beneficiary's four year baccalaureate academic regime combined with his two years of experience at the petitioner's company satisfied the required six years training in analysis programming.

In denying the petition, the director found that the education and training requirements set forth on the labor certification are separate, not overlapping, requirements. The director noted that the labor certification contained no comments suggesting that the beneficiary's college study could be used to meet both the education and training requirements. We concur.

On appeal, the petitioner submits the beneficiary's resume and asserts that the beneficiary's employment with Shreedeeep Services Private Limited, India, from January 1993 to August 1997, as a trainee programmer was concurrent, but separate from his academic studies and satisfies the ETA 750 training requirement when combined with his employment at the petitioner's company. We note that the petitioner interchangeably uses the terms "experience" and "training." While they may reflect similar content, "training" would require that an applicant has received ongoing instruction.

In this case, the ETA 750 requires that the applicant must have both a master's degree and six years training in analysis programming. The training can have occurred either before or after the award of the master's degree. However, the beneficiary's resume, without independent corroboration, does not satisfy the evidentiary requirements set forth in 8 C.F.R. 204.5(k)(3). We note that simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The evidence fails to establish that the beneficiary completed the requisite training requirements set forth on the ETA 750. The petitioner has not demonstrated that the beneficiary qualifies for the position on the approved labor certification.

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.