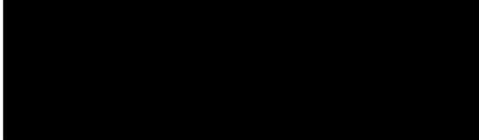


B5

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



File: EAC-02-036-53490

Office: Vermont Service Center

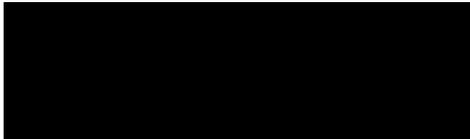
Date: APR 21 2003

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:



PUBLIC COPY

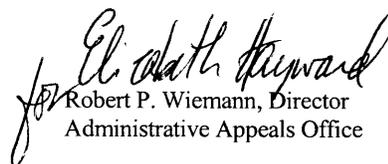
INSTRUCTIONS:

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 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.


for 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 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 seeks to employ the beneficiary as a software engineer. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the beneficiary does not qualify as an advanced degree professional.

On appeal, counsel argues that the beneficiary has the equivalent of an advanced degree and submits a new evaluation of the beneficiary's credentials.

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.

8 C.F.R. § 204.5(k)(2) permits the following substitution for an advanced degree:

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.

(Emphasis added.) On the Form ETA-750B, the beneficiary indicated that he had a 1983 Bachelor's degree from St. Xavier's College, Madurai Kamarai University in India and two 1985 diplomas from Datamatics Corporation. The beneficiary did not list any other education on the form. The petitioner initially submitted the beneficiary's 1983 degree issued by Madurai Kamarai University, the two diplomas issued by Datamatics reflecting certification of two courses, and an evaluation of these degrees by the Foundation for International Services, Inc. This evaluation concludes that the beneficiary's degree from Madurai Kamarai University, a three-year degree, "is equivalent to three years of university level credit from an accredited college or university in the United States." The evaluation then concluded that, based on the beneficiary's post-degree work experience, he had the equivalent of a bachelor's degree in computer science from an accredited college or university in the United States. On December 19, 2001, the director requested a new evaluation that only considered the beneficiary's education. In response, the petitioner submitted a new evaluation from Elegant Business Services, Inc. This evaluation considered not only the beneficiary's degree from Madurai Kamarai University and diplomas from Datamatics, but also three other computer courses not documented in the record. The evaluation concludes:

Therefore, on the basis of the provided transcripts and the computer diploma and certificate courses (5 courses and diploma), it is the unanimous decision of the committee that "[THE BENEFICIARY'S] EDUCATIONAL QUALIFICATIONS ARE EQUAL TO BS INFORMATION TECHNOLOGY FROM ANY ACCREDITED UNIVERSITY OF USA OR CANADA.["]

Based on this statement, the director concluded that the beneficiary did not have a foreign degree that was equivalent to a U.S. baccalaureate degree. On appeal, the petitioner submits a new evaluation from Elegant Business Services, Inc. This new evaluation takes into consideration the beneficiary's bachelor's degree, five computer courses (three of which are now documented), and additional education now attested to by the beneficiary. The new education consists of the following:

Certificate Course in Ganhan Though Madurai Kamarai University, Tamil Nadu, India. 1981-1982 (1 year).

Diploma in Automobile Engineering Industrial Technology Institute, Tirunelveli, Tamil Nadu, India. 1983-1984 (6 months).

Diploma in System Management, Jamanlal Bajaj Institute of Management Studies, Bombay, India. 1986-1988 (Completed only one year course work.)

Elegant Business Services, Inc. now concludes that the beneficiary "ALREADY SPENT MORE THAN 18 YEARS IN STUDIES AND POSSESSES VARIOUS MATH AND COMPUTER COURSES [SIC], THEREFORE, HIS OVER ALL [SIC] EDUCATION IS EQUAL TO MS INFORMATION TECHNOLOGY FROM ANY ACCREDITED UNIVERSITY OF USA."

Matter of Sea, Inc., 19 I&N 817 (Commissioner 1988), provides:

This Service uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight.

Much of the coursework attested to by the beneficiary is undocumented and was not claimed originally on the Form ETA-750B, signed under penalty of perjury. In addition, the petitioner has not established that the undocumented credentials are unavailable. For example, the record contains no letters from the awarding institutions attesting to their lack of records from the relevant time periods. Regardless, even if we accepted that the beneficiary completed all the coursework claimed, the record does not establish that the beneficiary has *a degree* that is equivalent to either a U.S. bachelor's degree or a U.S. Master's degree. As stated above, the beneficiary must have a degree that is the equivalent of a U.S. baccalaureate degree. A combination of degrees and coursework which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate or Master's degree does not meet the regulatory requirement of a foreign equivalent degree. In light of the above, we concur with the director that the beneficiary does not have the equivalent of a U.S. baccalaureate degree. As such, the beneficiary's subsequent work experience cannot be considered post-baccalaureate experience equivalent to an advanced degree. Thus, the beneficiary is not an advanced degree professional as defined in the regulations.

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.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.