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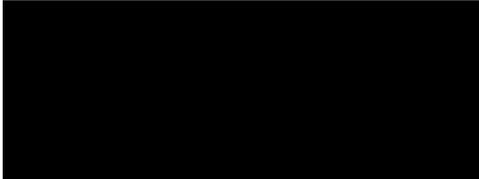
U.S. Department of Justice

Immigration and Naturalization Service

B5

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



File: EAC 01 252 51895 Office: Vermont Service Center

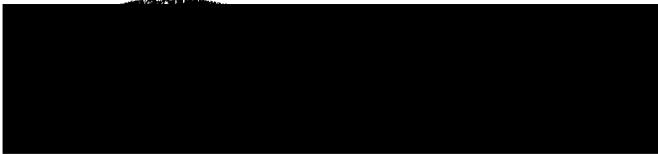
Date: **FEB 27 2003**

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)

IN BEHALF OF PETITIONER:



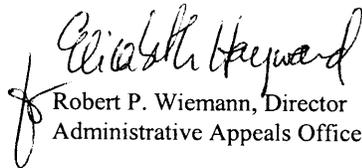
INSTRUCTIONS:

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.


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 is an information systems technology development company. It seeks to employ the beneficiary permanently in the United States as a programmer/analyst 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 found that the beneficiary possessed the foreign equivalent of a U.S. baccalaureate degree, but that the petitioner had not established that the beneficiary had at least five years of progressive experience in the specialty necessary to qualify for classification as an advanced degree professional.

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) 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 issue to be determined in this matter is whether the beneficiary qualifies as an advanced degree professional and possesses the minimum level of education and experience specified in the labor certification.

The ETA-750 Part A contained in the record states the following under Block 14: "Education-M.S. or equivalent in a computer-related field." By regulation, a U.S. 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.

The petitioner submitted an evaluation report from the Foundation for International Services, Inc. The report stated that the beneficiary's diploma from Mangalore University in India was the "equivalent to a bachelor's degree in industrial and manufacturing engineering from an accredited college or university in the United States."

The documentation accompanying the petition's filing did not include evidence in the form of letters from former employer(s) showing that the beneficiary had at least five years of progressive post-baccalaureate experience in the specialty. The record contained a letter from the petitioner dated August 2, 2001, stating that the beneficiary had "4 years of professional experience in the computer industry."

On October 16, 2001, the director requested further evidence of the beneficiary's eligibility.

In response, the petitioner submitted two letters describing the beneficiary's previous work experience. In a cover letter accompanying the petitioner's response, counsel stated: "The submitted experience letters certify that [the beneficiary] has more than 7 years progressive experience in computer science. Therefore, [the letters] will prove that [the beneficiary] has the equivalent of a master's degree in computer science."

The first letter was from Raveendra Kumar, Manager, Sriven Computer Solutions. The letter was from an official of Sriven Computer Services and it detailed the beneficiary's work experience at that company from September 1995 to December 1997.

The second letter, dated March 7, 2000, was from Srinivas Meda of Pinnacle Systems, Inc. It stated: "This is to certify that [the beneficiary] was engaged in the services of the Solvers Computer Services form [sic] Oct. 1993 to Aug. 1995 as a software engineer." Unlike the previous letter, this letter did not originate from the beneficiary's former employer and did not bear company letterhead. The record does not show that the author was a company official authorized to speak on behalf Solvers Computer Services or that the author had access to records verifying the beneficiary's employment at the time the letter was written. The Service regulation at 8 C.F.R. 204.5(k)(3)(i)(B) clearly requires "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 director denied the petition, stating that the beneficiary was not qualified at the time of the filing of the labor certification on March 21, 2001. The director’s decision acknowledged the petitioner’s submission of the two letters detailing the beneficiary’s prior work experience, but indicated that the letters only represented the beneficiary’s work experience from October 1993 to December 1997, “not the five years required.”

On appeal, the petitioner introduces additional evidence in an attempt to demonstrate the beneficiary’s work experience for Paragon Computer Professionals, Inc., from April 1998 to February 2000. The evidence submitted includes a job offer letter from Paragon Computer Professionals dated March 27, 1998 and an affidavit from Suneel Bandi, an individual who claims that he has worked at Paragon Computer Professionals since March 1998. The job offer letter, issued prior to the beneficiary’s employment, fails to demonstrate the beneficiary’s work experience at Paragon Computer Professionals.

The Service regulation at 8 C.F.R. 103.2(b)(2) states:

Submitting secondary evidence and affidavits. (i) *General.* The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

In regards to the affidavit submitted on appeal, the petitioner has provided no evidence showing that Suneel Bandi is authorized to speak on behalf of Paragon Computer Professionals as a company official. Furthermore, the affidavit was unaccompanied by an explanation as to why a letter directly from Paragon Computer Professionals, the beneficiary’s former employer, was unavailable. Nor did the petitioner submit secondary evidence such as (for example) W-2 Forms or pay stubs from 1998 and 1999 to confirm the beneficiary’s employment with Paragon Computer Professionals.

Counsel acknowledges on appeal that the two letters submitted in response to the director’s request for evidence demonstrated only four years of progressive experience. Clearly, then, the director’s decision was correct at the time of denial. In this case, the petitioner has failed to provide the proper evidence in the form of letters from “former employers” showing that the beneficiary had at least five years of progressive post-baccalaureate experience in the computer field. Nor has the petitioner offered a reasonable explanation as to why it could not obtain proper

letters from the beneficiary's former employers.

As stated in the regulations, the beneficiary must have a baccalaureate degree or a foreign equivalent degree and five years of progressive experience in the specialty in order to qualify as possessing the equivalent of an advanced degree. In this matter, the petitioner has not shown that the beneficiary qualifies as a professional holding an advanced degree or that he meets the minimum level of education and experience specified in the labor certification.

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.