

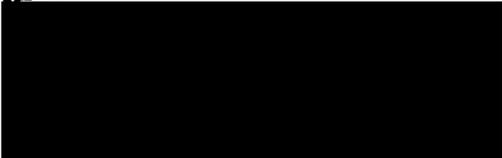


B5

U.S. Department of Justice
Immigration and Naturalization Service

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



File: [redacted] (SRC-00-032-51096) Office: Texas Service Center

Date: **JAN 06 2003**

IN RE: Petitioner: [redacted]
Beneficiary: [redacted]

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:



PHOTOCOPY

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, Texas 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 develops software for retailers and financial institutions. It seeks to employ the beneficiary permanently in the United States as a senior 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 determined that the position does not require a member of the professions holding an advanced degree.

On appeal, counsel maintains that the position sought by the beneficiary meets the requirements of the pertinent 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. 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 C.F.R. 204.5(k)(2).

The beneficiary's eligibility as a member of the professions with an advanced degree is not in dispute; the beneficiary holds a bachelor's degree and five years of progressive experience. The issue to be determined here is whether this particular 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 C.F.R. 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.

Block 14 on the ETA-750 Part A contained in the record contains the following information:

Education – "5*"

Major Field of Study – “Comp. science, data processing, engineering or related.”

Experience – “3*” years in job offered.

In this matter, block 14 includes asterisks, both of which refer to this footnoted assertion:

Or bachelor’s degree or foreign degree equivalent in computer science, data processing, engineering or related field (4 years of college) and 5 years of experience in offered position or 5 years of experience in mainframe applications programming using COBOL.

In denying the petition, the director stated:

The ETA-750 does not indicate that the five years of work experience must be progressive. . . . Therefore the position does not require the equivalent of an advanced degree.

Specifically, the director found the position did not require the equivalent of an advanced degree because the petitioner used the phrase “five years of experience,” omitting the word “*progressive*.” Counsel asserts that it is “implicit in the requirement of five years of experience that such experience be ‘progressive’ in nature.”

We find that experience in the computer industry is presumed to be progressive. The petitioner has satisfactorily shown that 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 December 20, 1999, is withdrawn. The appeal is sustained and the petition is approved.