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Bureau of Citizenship and Immigration Services

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



File:  Office: NEBRASKA SERVICE CENTER Date:

JUN 10 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:



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, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) 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 telecommunications company. It 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 position described on the Department of Labor's Application for Alien Employment Certification (Form ETA 750, Part A) could not be approved under this visa classification, as it does not require an advanced degree or its equivalent.

On appeal, the petitioner submits additional evidence and contends that the position certified on Form ETA 750 explicitly requires a master's degree.

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) defines an "advanced degree":

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.

The regulation at 8 C.F.R. § 204.5(k)(i) provides in pertinent part:

The job offer portion of the individual labor certification, Schedule A application, or Pilot Program application must demonstrate that the job requires a professional holding an advanced degree or the equivalent or an alien of exceptional ability.

Under these regulations, the petitioner must establish two distinct elements in order to obtain the visa classification: 1) that the job offered requires a member of the professions holding an advanced degree or its equivalent; and 2) that the alien's credentials satisfy those requirements. The beneficiary was awarded a master of science degree by the University of Central Oklahoma in December 1999. It is not disputed that he is a member of the professions holding an advanced degree. The only issue in contention is whether an advanced degree or the equivalent is required for the position.

The minimum requirements for the position are stated by the petitioning employer on Form ETA 750-A. In this case, Blocks 14 and 15 of the ETA 750-A contain the following language:

14. EDUCATION

Grade School	8
High School	4
College Degree Required	M.S. Degree*
Major Field of Study	Computer Science or related discipline

EXPERIENCE

In Job Offered	0 years
In Related Occupation	0 years

15. Other Special Requirements

*As an alternative to the minimum qualifications listed in Box 14, the employer will accept a B.S. in Computer Science or related discipline plus one year of related experience.

The ETA 750-A must be read as a whole. If the education requirement in Block 14 includes an asterisk (*) or other footnote, the information included in the note must be considered in determining whether the educational requirement establishes that an advanced degree or the equivalent is the minimum acceptable qualification for the position.¹

As expressly stated on the ETA 750-A, block 15, the job offered could have been filled by an individual with a B.S. in computer science or related discipline plus one year of related experience. The law is clear that a baccalaureate or its foreign equivalent followed by fewer than five years of progressive experience is not the equivalent of an advanced degree. 8 C.F.R. § 204.5(k)(2). As such, we concur with the director's denial. The offer of employment appearing on the ETA 750-A does not require a member of the professions holding an advanced degree.

On appeal, counsel contends that the language appearing in Block 15 should be ignored as long as the requirement of a master's degree appears in Block 14. He asserts that as the position requires a master's degree in block 14, there is no need to examine the employer's alternative equivalency requirement referenced in block 15. We do not agree. While Block 14 may specify an advanced degree, Block 15 clearly indicates that the employer would have alternatively accepted an applicant with a bachelor's degree and one year of progressive experience, rather than the five years of progressive experience necessary for the equivalent of an advanced degree. Thus, the position does not fulfill the minimum statutory and regulatory requirements for the visa classification.

Counsel contends that he relied upon assurances from a representative of the Nebraska Service Center and upon correspondence addressed to counsel dated November 15, 2000 from then INS Deputy

¹ Further discussion related to educational and experience requirements for EB-2 immigrants can be found in Cronin/Yates policy memorandum, (HQ70/6.2)(March 20, 2000) incorporated by reference in the court's order in *Chintakuntla v. INS*, No. C99-5211 MMC (N.D. Cal. May 4, 2000); *see also* 65 *Fed. Reg.* 41093 (July 3, 2000).

Executive Associate Commissioner [REDACTED] indicating that if the employer listed a master's degree in block 14 on the ETA-750A, or a bachelor's degree plus less than five years of progressive experience in block 15, the position would qualify for the EB-2 classification. Private discussions and correspondence solicited to obtain advice from the Bureau are not binding on the AAO or other Bureau adjudicators and do not have the force of law. *Matter of Izummi*, 22 I&N 169, 196-197 (Comm. 1998); *see also*, Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, U.S. Immigration & Naturalization Service, to All Service Center Directors, All District Directors, All Officers-in-Charge, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000)(copy incorporated into the record of proceeding). Moreover, Mr. Yates noted in the letter that its guidance "does not take precedence over law, statute, regulation, or precedent decisions, nor does it delineate INS policy."

The petition must be denied. The minimum requirements set forth in the ETA, Part A, Blocks 14 and 15 do not require a master's degree or a baccalaureate degree plus five years progressive experience. In light of this determination, the beneficiary is not eligible for the visa classification 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.