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U.S. Department of Homeland Security

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

JUN 25 2003

File: [REDACTED] EAC 00 229 51338 Office: Vermont Service Center

Date:

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)

ON BEHALF OF PETITIONER:

[REDACTED]

**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*

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 (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 with an advanced degree. The petitioner, a computer-consulting firm, seeks to employ the beneficiary permanently in the United States as a control engineer in software systems. 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 a member of the professions holding an advanced degree or its equivalent, and thus the beneficiary does not qualify for the job offered.

On appeal, the petitioner's counsel contends that the beneficiary's education and experience establish his eligibility as a member of the professions holding an advanced degree or its equivalent.

Section 203(b)(2)(A) of the Act states in pertinent part:

Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees . . . whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

8 C.F.R. § 204.5(k)(2) defines an advanced degree:

*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.

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. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). 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 December 6, 1999. The Application for Alien Employment Certification Form ETA-750A, blocks 14 and 15, indicates that the applicant for the position of control engineer in software systems must have a master's degree in computer science or mechanical engineering or the experiential equivalent.

As proof of the beneficiary's foreign equivalent degree, the petitioner submits a copy of the beneficiary's bachelor of technology degree in mechanical engineering from Jawaharlal Nehru Technological University, India, issued July 22, 1995; a copy of the beneficiary's grade transcript indicating that his bachelor's degree was a four year course of study; a copy of a diploma from the National Institute of Information Technology (NIIT), India, indicating the beneficiary successfully completed an 18 month course in systems management in October 1994; a copy of a January 1986 diploma in mechanical engineering from the Polytechnic Eluru, India, stating that the beneficiary completed a six semester course of study; and an October 1999 academic evaluation from the Foundation for International

Services, Inc.

The academic evaluation states that the beneficiary's January 1986 diploma represents the United States equivalent of high school graduation plus an associate's degree (two years of university level credit). The report notes that the beneficiary's NIIT diploma represents the United States equivalent of a computer-training course offered by a private company. The evaluation states that the beneficiary's bachelor of technology degree from Jawaharlal Nehru Technological University is the United States equivalent of a bachelor's degree in mechanical engineering. It also concludes that the combination of the beneficiary's education and work experience represents the United States equivalent of a bachelor's degree in computer science, and that the beneficiary's bachelor's degree followed by five years of progressive experience represents the United States equivalent of a master's degree in computer science.

The petitioner also submitted letters documenting the beneficiary's work experience.

In denying the petition, the director noted that the petitioner established that the beneficiary held the equivalent of a United States baccalaureate as of June 1995, but that the beneficiary had failed to complete at least five years of post-baccalaureate progressive experience prior to the priority date of December 6, 1999. We concur that the petitioner has not established that the beneficiary completed at least five years of post-baccalaureate progressive experience.<sup>1</sup>

The Bureau uses evaluations by a credentials evaluation organization as an advisory opinion only. *See Matter of Sea, Inc.*, 19 I&N 817 (Comm. 1988). While we agree that the beneficiary's July 1995 degree from Jawaharlal Nehru Technological University is the United States equivalent of a baccalaureate in mechanical engineering, we do not find that the beneficiary had completed five years of post-baccalaureate progressive experience.

On appeal, the petitioner contends that the beneficiary's educational and employment credentials have been established and submits a letter from [REDACTED] a vice-president of the Foundation for International Services, Inc., who reiterates that the beneficiary's combination of formal education and experience is the United States equivalent of a master's in computer science. We note that the appeal was dated June 9, 2001 and that the petitioner's counsel indicated that a brief and/or evidence would be submitted to the AAO within 30 days. As of this date, more than twenty-two months later, no other documents have been received.

As previously noted, the beneficiary's eligibility must be established as of the filing date of the labor certification application. *See Matter of Katigbak, supra*. In this case, in order to show that the beneficiary has the equivalent of an advanced degree, the petitioner must show that the beneficiary completed five years of progressive experience subsequent to the award of his baccalaureate degree on July 22, 1995. The earliest date that this requirement could be satisfied is July 22, 2000. The petitioner failed to establish that the beneficiary's post-baccalaureate employment experience had been completed,

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<sup>1</sup> We note that the beneficiary's post-baccalaureate degree experience should be measured from the date of the award of the degree on July 22, 1995, not June 1995 as stated by the director.

as the filing date of the petition is December 6, 1999, over seven months short of the necessary five years. 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.

**ORDER:** The appeal is dismissed.