

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



File: [REDACTED] Office: NEBRASKA SERVICE CENTER

Date: MAY - 8 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant petition was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an application software development company that seeks to employ the beneficiary as a software engineer 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 the job described on the labor certification does not require, at a minimum, a member of the professions holding an advanced degree or its equivalent.

On appeal, counsel asserts that the director “has misread the Labor Certification.”

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).

In this instance, the beneficiary holds an advanced degree, specifically a master’s degree in mathematics from Ohio University. It cannot suffice, however, simply to establish that the beneficiary holds an advanced degree. Pursuant to 8 C.F.R. § 204.5(k)(4)(i), the job offer portion of the labor certification must demonstrate that the job requires a professional holding an advanced degree or the equivalent (i.e., a bachelor’s degree and five years of progressive post-baccalaureate experience). If the minimum requirements for the job are less than a master’s degree or a bachelor’s degree plus five years of progressive post-baccalaureate experience, then the job does not fall within the classification sought.

Part A (“Offer of Employment”) of the labor certification application, Form ETA-750, indicates that the job requires a master’s degree in computer science or computer engineering, and two years experience in the job offered or a related occupation. An approved amendment to the labor certification indicates that the employer will also accept, in lieu of a master’s degree and two years of experience, a “B.S. and 4 yrs academic or employment exp.”

The director denied the petition, stating “the minimum educational requirement is stated to be a Masters Degree or Bachelors Degrees [sic] and four (4) years academic or employment experience. Because the minimum educational requirements of the ETA 750 do not meet the requirements of Title 8, Code of Federal Regulations, Part 204.5(k)(4), this petition may not be approved.”

On appeal, counsel states that the director “has misread the Labor Certification Application. . . . Said Application sets forth two alternative minimum requirements for the job opportunity. One alternative requires a Master degree and two (2) years experience. The other alternative requires

a Bachelor degree and (4) four years experience. There is no attempt to equate a Master degree to a Bachelor degree and (4) four years experience.” Counsel thus stipulates that an individual with a bachelor’s degree and four years of experience qualifies for the position. Given that the regulations plainly and repeatedly state that the equivalent of a master’s degree requires five, not four, years of post-baccalaureate experience, counsel fails to explain how a job that requires only four years of post-baccalaureate experience can possibly be compatible with the regulatory definition of what constitutes the equivalent of a post-baccalaureate degree.

Counsel’s assertion that there are two separate or “alternative” sets of minimum requirements for the position is not persuasive. It remains that an individual with no advanced degree, and less than five years of post-baccalaureate experience, fully qualifies for the position as described on the labor certification. As stated above, the fact that this particular beneficiary holds a master’s degree does not alter the fact that the position does not require such a degree or its regulatory equivalent.

Beyond the above issue, we note that the labor certification requires a degree in computer science or computer engineering. According to the transcript from Ohio University, the beneficiary’s master’s degree is in mathematics. The beneficiary indicates that his bachelor’s degree is in mechanical engineering (although the record contains no documentation of his bachelor’s degree). Because neither mathematics nor mechanical engineering is included on the list of acceptable major fields of study, it would appear that the beneficiary does not meet the job requirements listed on the labor certification. The petitioner took several graduate-level computer courses after he completed his master’s degree, but there is no evidence that any degree resulted from this study.

Because the job offer described in the labor certification requires only four years of post-baccalaureate experience, the position does not require a member of the professions holding an advanced degree or its equivalent.

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. Accordingly, the decision of the director will not be disturbed and the appeal will be dismissed.

ORDER: The appeal is dismissed.