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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.
ULLB, 3rd Floor
Washington, D.C. 20536

MAR 24 2003

File: EAC 99 246 51427 Office: VERMONT SERVICE CENTER Date:

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:

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

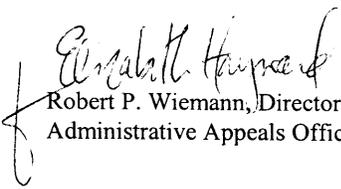
INSTRUCTIONS:

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 preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office 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 computer consultant and developing firm. It seeks to employ the beneficiary permanently in the United States 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 that the position does not require a member of the professions holding an advanced degree or the equivalent, and that the beneficiary does not possess the progressive post-baccalaureate experience necessary to establish the equivalent of an advanced degree.

On appeal, counsel maintains that the position sought by the beneficiary meets the requirements of the pertinent visa classification, and requests reclassification of the petition in the event that the arguments cited are not persuasive.

The request for change of classification cannot be granted. There is no provision in the statute, regulations or case law to allow for a change in classification requested after a decision has already been rendered. We note that, before the decision was rendered, the director offered the petitioner an opportunity to change the classification sought, and the petitioner declined that opportunity. At any rate, with the approval of this petition, the request for reclassification becomes moot.

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 first 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.

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

Education – Bachelor’s degree

Major Field of Study – Engineering, Computer Science, Mathematics or Information Science

Experience – Five years in the job offered

In block 15, “Other Special Requirements,” the petitioner indicated that it “[w]ill consider Masters Degree with 2 years of experience” in lieu of a bachelor’s degree plus five years of experience.

Five years of experience in software engineering would necessarily be progressive, due to the highly technical nature and the rate of change in the computer field. The determination to approve the petition would have been made simpler if the petitioner had required “progressive” experience on the labor certification, but the petitioner’s failure to use that word may be excused in this case, where the nature of the work to be performed is inherently progressive. This position, at a minimum, requires a professional holding an advanced degree or its equivalent.

The second issue involves the beneficiary’s qualifying experience. The beneficiary does not hold a master’s degree and therefore the petitioner claims that the beneficiary qualifies through post-baccalaureate experience. The director, in denying the petition, stated that “[t]he record does not include qualifying letters referencing the beneficiary’s work experience,” but several such letters are in fact in the record. The petitioner has in fact submitted employer letters documenting the beneficiary’s employment from 1988 onward. The majority of this employment took place at the Government of India Planning Commission National Informatics Centre District Computer Centre, Jhansi, India. [REDACTED] scientific officer at that facility, states:

[The beneficiary] worked as District Informatics Officer from 7/4/88 to 10/6/96 at Jhansi, Uttar Pradesh, India.

During this period he was responsible for working of District Computer Centre. His job involved installation and administration of Operating Systems Xenix/SCO Unix/Unixware, and Oracle Databases 6/7 on various hardware platforms.

He has also designed, developed, implemented information systems in various areas of District Administration using Oracle Tools/Foxbase/C.

The above employment is crucial to the petitioner’s claim. Because the beneficiary worked there for over five years, and has less than five years of other experience prior to the petition’s May 1999 filing date, the petition can be approved only if the above employment qualifies as progressive post-baccalaureate experience in the job offered.

In response to a request by the director, the petitioner has submitted an independent evaluation of the beneficiary’s employment experience. The evaluator determined that the beneficiary “has completed Nine Years, Two Months of bachelor’s-level employment experience in Computer Science, Software Engineering, and related areas, characterized by increasingly advanced

responsibility and complexity.” In denying the petition, the director did not explain why this evaluation was not sufficient.

The petitioner has satisfactorily shown that this position, at a minimum, requires a professional holding the equivalent of an advanced degree, and that the beneficiary qualifies as a member of the professions 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 November 1, 2000 is withdrawn. The appeal is sustained and the petition is approved.