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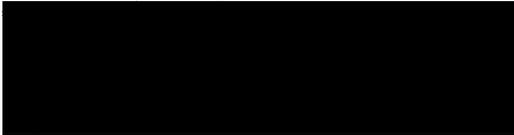
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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**



FILE:



Office: TEXAS SERVICE CENTER

Date:

FEB 10 2004

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 of the Administrative Appeals Office 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.

Mari Johnson

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 Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a computer systems manufacturer. It seeks to employ the beneficiary permanently in the United States as a systems programmer advisor 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 beneficiary does not meet the job requirements set forth on the labor certification.

On appeal, counsel argues that the beneficiary's second Master's degree is equivalent to the two years of experience set forth on the labor certification. While counsel asserts that he will submit a brief and/or additional evidence within 30 days of filing the appeal, May 22, 2003, this office has received nothing further. The appeal will be adjudicated on the evidence of record.

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). Nothing in that regulation, however, implies that a second Master's degree may be substituted for experience set forth on a labor certification.

The beneficiary's eligibility as a member of the professions with the equivalent of an advanced degree is not in dispute; at the time of filing the beneficiary held a Master's degree in a field relevant to the position sought plus five years of progressive experience. In addition, this particular position requires a member of the professions holding an advanced degree or its equivalent. The issue is whether the beneficiary meets the job requirements of the proffered job as set forth on the labor certification. 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.

It is 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:

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

Education – "MS*"

Experience – "2*" years in job offered.

In this matter, block 14 includes asterisks, both of which refer to this footnoted assertion: "[W]ill accept B.S. and five years experience."

In denying the petition, the director found that the beneficiary had not received his second Master's degree as of the priority date of the petition and that the labor certification did not indicate that a second Master's degree would be acceptable in lieu of the two years of required experience.

On appeal, counsel states:

The underlying labor certification and related posting documents did not exclude acceptance of a second master's degree in lieu of experience and the existence of candidates with multiple advanced degrees, for this position, is so rare that it is unreasonable, capricious and arbitrary to require that the acceptable equivalence of a second master's degree be explicitly stated in the ETA-750A and related recruitment materials.

Counsel is not persuasive. Whether or not a second degree is rare for this type of position, it remains that the beneficiary does not meet the requirements on the labor certification. Citizenship and Immigration Services (CIS) is not required to assume every credential not explicitly excluded is acceptable. Moreover, counsel does not address the director's valid concern that the beneficiary did not receive his second degree until after the petition's priority date.

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 not met that burden.

ORDER: The appeal is dismissed.