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U.S. Department of Homeland Security
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Washington, DC 20536



U.S. Citizenship
and Immigration
Services

[Redacted]

FEB 26 2004

FILE:

[Redacted]

Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

Petitioner:

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]

Identifying data deleted to
prevent disclosure, unwarranted
invasion of personal privacy
PUBLIC COPY

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
for Robert P. Wiemann, Director
Administrative Appeals Office

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

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, a high energy physics research laboratory, seeks to employ the beneficiary as a "Computer Professional VI."¹ As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the beneficiary does not possess the minimum qualifications listed on the labor certification.

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

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

The issue to be determined here is whether the beneficiary meets the education requirement specified 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. Block 14 on the ETA-750 Part A contained in the record contains the following information:

College Degree Required – M.S.

Major Field of Study – M.S., Computer Science or Electrical Engineering.

Experience – Two years in the job offered or in the related occupation of Electrical Engineer.

The beneficiary, on his Form ETA-750B Statement of Qualifications, states that he earned a master's degree in "Computer Science" from the Moscow Engineering and Physical Institute (MEPI) in 1982. A translated certificate shows that MEPI awarded the beneficiary with the title "engineer/mathematician" in 1982 after a five-year course of study. The translated certificate offers no other specific information about the beneficiary's major field of study. A credential evaluation report from World Education Services indicates that the beneficiary's completion of the five-year post-secondary program represents the equivalent of a "[b]achelor's and master's degree," with a major in "applied mathematics," from an accredited United States institution.

The director denied the petition, on the grounds that the labor certification indicates that the position requires a master's degree in computer science or electrical engineering, whereas the beneficiary's degree is in applied mathematics.

On appeal, the petitioner submits five new evaluations of the beneficiary's degree, all emphasizing the extent to which the beneficiary's studies involved computer science and engineering. One evaluator, Barry S. Silberzweig of the Trustforte Institute, notes that the beneficiary's master's thesis was clearly oriented toward

¹ Some materials in the record identify the job title as "Computer Professional VII."

computer science; its title was "Development of Software for Automatic Systems for Information Gathering and Processing from Critical Assemblies of Nuclear Reactors." A detailed list of the beneficiary's MEPI courses, not available to the director at the time the decision was rendered, shows substantial course work in computer science and electrical engineering, rather than a handful of token or basic computer courses. The fact that the beneficiary began working in computer science more or less immediately after his 1982 graduation indicates that he had received sufficient training to qualify for such employment, thus corroborating the evaluators' finding that the beneficiary's degree was pertinent to computer science.

The materials submitted on appeal provide a more thorough understanding of the beneficiary's educational background than was available to the director at the time of the decision. We find that this supplemental evidence is sufficient to overcome the director's stated grounds for denial.

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 sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.