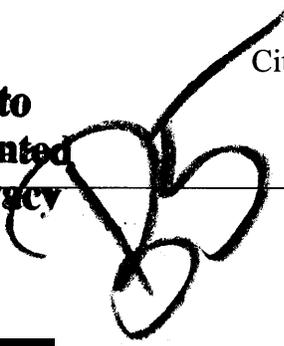


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U.S. Department of Homeland Security

Citizenship and Immigration Services

**identifying data deleted to
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invasion of personal privacy**



ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536



File: [Redacted] Office: CALIFORNIA SERVICE CENTER

Date: **JAN 09 2004**

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)

IN BEHALF OF PETITIONER:



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 Citizenship and Immigration Services (CIS) 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.

for 
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California 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 software consultancy 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 beneficiary does not meet the requirements of the labor certification, owing to his educational background and place of residence.

On appeal, counsel maintains that the beneficiary qualifies for the position described in the labor certification. The petitioner submits documentation establishing the beneficiary's plans to relocate.

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 the beneficiary meets the minimum requirements for the position as described in the labor certification. The labor certification form itself, Form ETA-750A, describes the minimum requirements for the job offered. Blocks 14 and 15 of the ETA-750A 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.

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

Education – 6 years, "Masters or equivalent"
Major Field of Study – "Computer Science"
Experience – 0 years

The beneficiary's only claimed college education consists of study at the University of Madras, which culminated in a bachelor's degree in 1972. A certificate from the University of Madras indicates that the beneficiary received "the Degree of Bachelor of Engineering, Mechanical Branch."

The initial submission includes an evaluation report from Diane C. Hurley of the Foundation for International Services, Inc. Ms. Hurley states “the diploma from the University of Madras . . . is equivalent to a bachelor’s degree in mechanical engineering from an accredited college or university in the United States.” Ms. Hurley notes the petitioner’s resume lists the beneficiary’s “employment experiences in the computer field from August of 1982 to the present.”

Ms. Hurley concludes:

[The beneficiary] has, as a result of his educational background and employment experiences (3 years of experience = 1 year of university-level credit), an educational background the equivalent of an individual with a bachelor’s degree in computer science from an accredited college or university in the United States. Furthermore, as a result of his having the equivalent of a U.S. baccalaureate degree followed by at least five years of progressive experience in the specialty, an educational background the equivalent of an individual with a master’s degree in computer science from an accredited college or university in the United States.

The director instructed the petitioner to provide a new “education evaluation addressing the beneficiary’s educational achievements in terms of equivalent education in the United States. An acceptable evaluation must consider formal post-secondary education only and not experience.”

In response, counsel states:

On the Form ETA 750A, it was indicated as a requirement for the candidate to have obtained at least a Master’s Degree or its equivalent. In stating that the candidate requires the “equivalent” to a Master’s degree, it is intended to mean that a combination of work experience and education should be the equivalent to a Master’s degree.

The petitioner has submitted a second evaluation, from Professor Orandel Robotham of Medgar Evers College School of Business. Prof. Robotham states that the beneficiary’s degree from the University of Madras is “substantially similar . . . to a Bachelor of Science Degree in Mechanical Engineering from an accredited institution of higher education in the United States.” Prof. Robotham then details the beneficiary’s work experience and states that the beneficiary “has attained, in time equivalence, a Master of Science Degree in Computer Science.”

The director denied the petition, stating “[t]he labor certification does not state that the equivalent of a Bachelor’s degree or any other level of education will satisfy the requirement.” The director noted that the beneficiary holds a degree in Mechanical Engineering, rather than in Computer Science, and that the record contains no evidence that the beneficiary’s college education included any computer courses. On appeal, counsel reiterates that the regulations permit the substitution of post-baccalaureate experience in place of an actual master’s degree.

There is no dispute that the beneficiary's degree is equivalent to a United States baccalaureate degree. We acknowledge that the beneficiary's degree is not in the field of computer science; it is not entirely clear that this field was offered as a major field of study in the late 1960s when the beneficiary began his university education. That being said, it is not unusual for an individual to pursue a bachelor's degree in one field, and a master's degree in a different field. The labor certification does not indicate that all of the candidate's education must have been in computer science; only that the "Masters degree or equivalent" be in that field.

The regulations indicate that five years of progressive post-baccalaureate experience is functionally equivalent to a master's degree for the purposes of the classification sought. The petitioner has amply demonstrated that the beneficiary has well over a decade of such experience in the field of computer science. Given that this experience is in the field of computer science, it is difficult to view this experience as equivalent to a master's degree in any field other than computer science. If the beneficiary had accumulated identical experience, while holding a bachelor's degree in Computer Science, there would be no question that this experience amounts to the equivalent of a master's degree in Computer Science.

While we understand the director's concerns, we find that the petitioner has overcome this ground for denial by demonstrating that the beneficiary's post-baccalaureate experience in computer science is equivalent to a master's degree in that field.

The other issue raised by the director concerns the beneficiary's place of employment. Line 6 of the Form ETA-750A is designated for the employer's address. The petitioner listed an address in Irvine, California. Line 7 is designated for the "Address Where Alien Will Work (if different from item 6)." The petitioner wrote "Same," indicating that the beneficiary would work at the Irvine address. The beneficiary stated his place of residence as Santa Clara, which is over 300 miles north of Irvine.

In a request for additional evidence, the director observed that the beneficiary resides in Santa Clara, which is not a realistic commute from the petitioner's location in Irvine. In response, the petitioner has indicated that the beneficiary "is currently working off site on an internal project at his primary residence. [The beneficiary] has agreed to travel and relocate at the place of assignment as and when required by [the petitioner]."

The director denied the petition, stating that Irvine and Santa Clara "are not in the same determined metropolitan statistical area." The director stated that the labor certification covers job conditions in Irvine, not in Santa Clara, and that therefore the petitioner must obtain a new labor certification, which more accurately reflects the beneficiary's work location.

On appeal, the petitioner submits evidence such as school and bank records to establish that the beneficiary is in the process of preparing to relocate his family to the Irvine area. Counsel observes that the beneficiary need not reside near the place of employment as of the petition's filing date, provided the petitioner is able to demonstrate the beneficiary's *bona fide* intent to relocate upon approval of the petition.

Upon consideration, we accept counsel's arguments and the petitioner's evidence. The evidence submitted is first-hand documentation of the beneficiary's intention to relocate to Irvine, and counsel is correct in stating that the beneficiary need not have already resided near Irvine as of the petition's filing date. In this regard, we note that an employer may file a labor certification on behalf of an alien who is not yet in the United States. While a beneficiary must be eligible for the classification sought as of the date of filing, this requirement does not extend to the beneficiary's place of residence. The petitioner's explanation as to how the beneficiary was able to work for the petitioner despite his distance from Irvine is plausible, considering the factors specific to this case.

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 April 21, 2003 is withdrawn. The appeal is sustained and the petition is approved.