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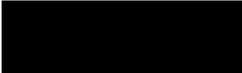
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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: **MAY 25 2004**

IN RE:

Petitioner:

Beneficiary:



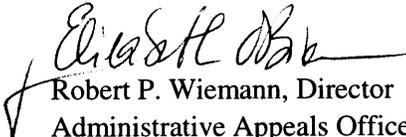
PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, California 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 provides internet-based phone and fax services. It seeks to employ the beneficiary as a network administrator pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as member of the professions holding an advanced degree. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the beneficiary did not possess the required educational background, as stated on the Form ETA-750, Application for Alien Labor Certification.

An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2).

As required by 8 C.F.R. § 204.5(k)(4), the petitioner submitted an individual labor certification, Form ETA-750, which has been endorsed by the Department of Labor. At block 14, the labor certification states that a master's degree is the minimum level of education required for a worker to perform the job duties in a satisfactory manner. The labor certification specifically requires that the major field of study be in Computer Engineering, Computer Science, Electrical Engineering, Telecommunications or a related field.

Also submitted in support of the petition were the beneficiary's Master of Science degree in Management and a photocopy of her academic transcript.

On January 4, 2003, the director issued a notice requesting evidence of the petitioner's ability to pay the proffered wage and clarification regarding the beneficiary's educational background. In regard to the latter, the director's notice stated:

Form ETA-750 indicates that the position requires Master's degree in Computer Engineering, Computer Science, Electrical Engineering, Telecommunications or a related field. However, the beneficiary's diploma and transcripts indicate that the beneficiary has earned a Master of Science Degree in Management. Please provide clarification of the educational background.

In response, the petitioner provided the requested documentation. Included in that documentation was an original student copy of the beneficiary's academic transcript for her master's degree and a letter stating that her studies "focus[ed] on the concentration of Telecommunications Management." The petitioner highlighted several courses on the beneficiary's transcript that related to the Telecommunications Management concentration offered by Polytechnic University.

On April 1, 2003, the director issued a second notice requesting a copy of the petitioner's federal income tax return for 2002. The request for evidence concluded by stating: "This notice replaces and supercedes all previously issued request[s] for evidence."

In response, the petitioner submitted a copy of its Form W-2 (Wage and Tax Statement) for 2002 reflecting earnings of \$1,441,348. Also submitted was a copy of Internal Revenue Service Form 7004, Application for Automatic Extension of Time to File Corporation Income Tax Return, indicating that the petitioner was requesting until September 15, 2003 to file its 2002 tax return.

On July 25, 2003, the director denied the petition, stating:

It is duly noted that the beneficiary earned a Master of Science Degree in "Management" from Polytechnic University (Brooklyn, New York) in 1998. However, Form ETA-750 does **not** specifically define a Masters in *Management* degree as equivalent to that of a [degree in] Computer Engineering, Computer Science, Electrical Engineering, Telecommunications, or a related field. In [a] response dated March 21, 2003, counsel for the petitioner asserts that the beneficiary's educational area of concentration is actually "Telecommunications Management." As evidence, counsel points out that many of the beneficiary's courses were computer/telecommunication related. However, [it] is worthwhile mentioning that in many fields of study today, computer courses are essential to the major, especially in business or management-related fields. The evidence in the record does not establish that a Master's degree in "Management" is sufficient to satisfy the requirement stated on the ETA-750, despite the fact that transcripts indicate the beneficiary has taken *some* computer courses related to the major field study.

Therefore, the evidence of record is insufficient to establish that the beneficiary satisfies all the requirements on the ETA-750, which in this case is a Masters Degree in Computer Engineering, Computer Science, Electrical Engineering, Telecommunications or [a] related field. As such, the beneficiary is ineligible for classification as a member of the professions holding an advanced degree.

On appeal, the petitioner presents documentation showing that the beneficiary's coursework concentration in Telecommunications Management was an official academic program comparable to a major (rather than general computer courses required of all students seeking a Master of Science degree in Management).

A letter from Mel Horwitch, Professor of Management and Former Chair, Management Department, Polytechnic University, states: "[The beneficiary] earned a Master of Science degree in Management (MSM), with a concentration in Telecommunications. It should be noted that Telecommunications is one of several concentrations possible in our MSM Program." Professor Horwitch's letter adds that in order to fulfill the requirements of the Telecommunications Concentration, the beneficiary took the following courses: Introduction to Management of Data Communications and Networks, Advanced Management of Data Communications and Networks, Management of Communications Networks and Security, Project Planning and Control, and Management of New and Emerging Technologies: Multimedia, Virtual Reality, Fuzzy Logic.

A letter from Dr. Barry Blecherman, Director, MSM Degree Program, and Associate Dean, Polytechnic University, states:

At Polytechnic, the Masters of Science in Management Degree is a technology-focused course of study. In MBA [Master of Business Administration] programs, students' areas of concentration come from intellectual disciplines such as finance, accounting, marketing, etc. In the MSM Program, our students specialize in individually focused areas such as Telecommunications Management, Operations Management, and others. [The beneficiary's] focus of study was Telecommunications Management.

* * *

The State of New York Board of Education permits our university to list on a diploma only the title of the degree and not the student's specialization.... Therefore, [the beneficiary's] specialization in Telecommunications Management does not appear on her diploma or transcript even though she has acquired significant expertise in this field as a result of her studies at Polytechnic University.

* * *

The Polytechnic catalog, page 204, describes the mission of the concentration in studies of Telecommunications Management as follows:

The concentration in Telecommunications Management provides managers in the telecommunications and information industries with modern methods and concepts relevant in telecommunications and information management and for integrating telecommunications and information technology into a firm's overall decision making.

Also provided on appeal was a copy of the 1996-98 Polytechnic course catalog. The course catalog lists "Telecommunications Management" as one of six concentrations available through the MSM program. The catalog also lists the specific courses required for students pursuing the Telecommunications Management concentration.

We find that the evidence presented by the petitioner on appeal is adequate to overcome the deficiencies noted by the director. The appellate submission clarifies that while the beneficiary earned a Master of Science degree in "Management," her concentration/major was that of "Telecommunications Management." Therefore, on the basis of the evidence submitted, it is reasonable to conclude that the beneficiary possesses the required educational background as stated on the Form ETA-750, Application for Alien Labor Certification.

Counsel for the petitioner raises an additional issue on appeal. Counsel questions whether the director acted appropriately in denying the present case based on the petitioner's response to a request for evidence that the director stated had been "replaced and superceded." We find no error in the director's decision to deny this petition as the petitioner was afforded an opportunity to respond, and did respond, to the deficiency regarding the beneficiary's educational background. As the petitioner was given an opportunity to remedy the educational deficiency, the director's actions were entirely consistent with the regulation at 8 C.F.R. § 103.2(b)(8). It is noted that the second request for evidence was not issued until after the petitioner's first response had been received; therefore, it is not evident that the petitioner's response to the initial request was somehow negatively impacted or prejudiced by the director's second notice. Regardless of any statement by the

director on a subsequently issued request for evidence, the petitioner still bears the burden of establishing eligibility pursuant to the regulations at 8 C.F.R. § 204.5(k).

In this case, we find that the strength of the evidence presented on appeal has overcome the director's 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.