



U.S. Citizenship
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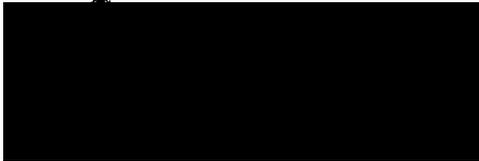
File: [REDACTED] Office: TEXAS SERVICE CENTER Date: NOV 28 2005

IN RE: Petitioner:
Beneficiary:



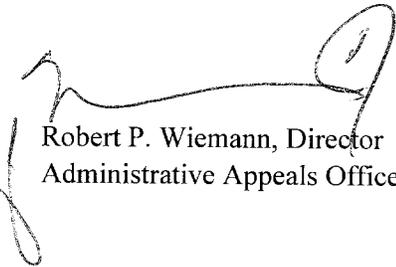
Petition: Immigrant Petition for Alien Worker Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision 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 preference visa petition was denied by the Director, Texas Service Center, and the petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO dismissed the appeal. The matter is now before the AAO on motion to reopen and reconsider. The motion will be granted and the previous decision of the AAO will be affirmed. The petition will remain denied.

The present motion was filed on July 5, 2000, requesting that the director reopen her decision. The motion was filed prior to the AAO's review of the petitioner's appeal and the entry of the appellate decision on January 18, 2001. Realizing that there was a pending motion, the director forwarded the motion to the AAO as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii).

The petitioner is a software development company. It seeks to employ the beneficiary permanently in the United States as a systems 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 job offered did not require a member of the professions holding an advanced degree.

On motion, counsel asserts that the petition must be approved pursuant to the U.S. District Court decision, *Chintakuntla v. INS*, No. C-99-5211 MMC ND (May 4, 2000).

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 CFR 204.5(k)(2).

The issue to be determined here is whether this particular software engineer 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 CFR 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. In particular, if the education requirement in block 14 includes an asterisk (*) or other footnote, the information included in the note must be

included in determining whether the educational requirement, as a whole, shows that an advanced degree or the equivalent is the minimum acceptable qualification for the position.

The ETA-750 Part A contained in the record reflects the following:

- Item 14: Education – Masters* in Engineering or Computer Science, or Math.
Experience – 1 year in the job offered.
- Item 15: * Will accept Bachelors degree and five (5) years of experience
in lieu of Masters.

In this matter, block 14 requires a minimum of a Masters degree in engineering, computer science, or math. Regarding the minimum level of experience, block 14 states that the employer requires one year of experience in the job offered. The petitioner has further indicated in block 15 that it will accept a candidate with an unspecified bachelors degree and five years of experience, in substitution for a Masters degree. The duties of the job offered are described in block 13, which briefly states: “Analyze, design, develop re-engineer, test and implement various business applications using IBM MVS, COBOL, CICS, VSAM, REXX, DEC VMS, BASIC AND TDMS. Install system software and provide technical support.”

Because of the petitioner’s indefinitely phrased description of the required experience, it is not clear that the position requires the experience to be either progressive or post-baccalaureate. On appeal, counsel has provided no explanation of the minimum required experience. Consequently, it cannot be found that this position, at a minimum, requires a professional holding an advanced degree or its equivalent, as required by 8 CFR 204.5(k)(4)(i).

On motion, the petitioner did not address the beneficiary's educational qualifications for the proffered position. The petitioner has not established that the beneficiary possesses the required level of education. Although the petitioner claims that the beneficiary holds a foreign degree equivalent to a United States bachelor’s degree, the petitioner did not submit a copy of the beneficiary’s diploma, transcript, or any other evidence that would support this claim. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

For this additional reason, the petition may not be approved. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The previous decision of the AAO will be affirmed. The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The previous decision of the AAO is affirmed.