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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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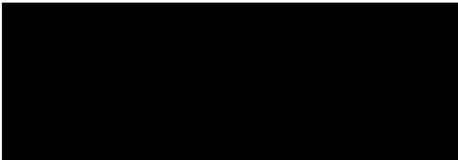
File: EAC 99 217 52167 Office: VERMONT SERVICE CENTER

Date: 4 - APR 2002

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3).

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 the Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Helen E Crawford for*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based preference visa petition was denied by the Director, Vermont Service Center. The director's decision to deny the petition was affirmed by the Associate Commissioner for Examinations on appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

The petitioner is an international freight forwarding company. It seeks to employ the beneficiary permanently in the United States as a programmer/analyst. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary met the petitioner's qualifications for the position as stated in the labor certification as of the petition's filing date.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

A labor certification is an integral part of this petition, but the issuance of a labor certification does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the training, education, and experience specified on the labor certification as of the petition's filing date. Matter of Wing's Tea House, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's filing date is March 29, 1996.

The Application for Alien Employment Certification (Form ETA 750) indicated that the position of programmer/analyst required a Bachelor's degree in computer science or a related area and two years of experience in either the job offered, or in the related occupation of programmer.

The director denied the petition noting that although the petitioner had established that the beneficiary had a Bachelor's degree in computer science, the degree was awarded on August 31, 2000, a date subsequent to the filing date of the petition.

On motion, counsel submits an educational evaluation from The Trustforte Corporation which states that "based on the nature of the courses and the number of credit hours completed by [the

beneficiary], in addition to his prior completion of a Bachelor of Science Degree from Rabasaheb Bhimrao Ambedkar Bihar University, he satisfied substantially similar requirements to the completion of a Bachelor of Science Degree in Computer Science by the end of the Spring Semester in 1994. On August 31, 2000, [the beneficiary] was awarded a Bachelor of Science Degree in Computer Science from the New York Institute of Technology."

This argument is not persuasive. The issue here is whether the beneficiary met all of the requirements stated by the petitioner in block #14 of the labor certification as of the day it was filed with the Department of Labor. The combination of education and experience may not be accepted in lieu of education when establishing eligibility for an immigrant petition. The petitioner has not established that the beneficiary had a Bachelor's degree in either computer science or a related field on March 29, 1996. Therefore, the petition may not be approved.

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 not sustained that burden.

**ORDER:** The Associate Commissioner's decision of May 30, 2001 is affirmed. The petition is denied.