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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[Redacted]

File: [Redacted] Office: NEBRASKA SERVICE CENTER

Date: JUL 10 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:

[Redacted]

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

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is a contract research organization. It seeks to employ the beneficiary as a programmer/analyst. Accordingly, the petitioner filed the current petition to classify the beneficiary as a professional pursuant to section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3)(A)(ii). The director determined that the beneficiary did not possess the required educational background, as stated on the Form ETA-750, Application for Alien Employment Certification.

On appeal, counsel for the petitioner states that the director misinterpreted the law and facts in finding that the beneficiary did not possess the required level of education. In support of this claim, the petitioner submitted additional evidence for the record.

Section 203(b)(3) of the Immigration and Nationality Act (the Act) states:

(A) In general. - Visas shall be made available, in a number not to exceed 28.6 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (1) and (2), to the following classes of aliens who are not described in paragraph (2):

(i) Skilled workers. - Qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least 2 years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

(ii) Professionals. - Qualified immigrants who hold baccalaureate degrees and who are members of the professions.

As required by 8 CFR 204.5(l)(3)(i), 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 the minimum qualifications required for the position are a Bachelor's degree in Computer Science, Computer Information Systems, Management Information Systems, or related disciplines, plus two years of relevant experience in data programming; OR, alternatively, a master's or higher degree in Computer Science, Computer Information Systems, Management Information Systems, or related disciplines; OR, alternatively, the equivalent combination of education and experience. Education and

experience must include Oracle Programming, SQL, and PL/SQL. The labor certification specifically requires that the major field of study for the degrees be in "Computer Science or [a] related field." The labor certification does not state that any other degree specialization will satisfy the requirement.

The record indicates that the beneficiary holds a Master's degree in Modern Chinese from East China Normal School and a Ph.D in Linguistics from the University of Kansas.

In his decision, the director found that the beneficiary "does not hold a United States bachelor's degree, or a foreign equivalent degree in Computer Science or a related field." Instead, the director found that the beneficiary possessed degrees in Modern Chinese and Linguistics. Accordingly, the director concluded that the beneficiary did not possess the minimum required education, as stated on the Form ETA-750.

On appeal, counsel for the petitioner asserts that the beneficiary's Ph.D is sufficiently related to the field of computer science to qualify the beneficiary under the labor certification. In support of this claim, the petitioner submitted numerous letters from experts and leaders in the industry supporting the close relationship between the study of Linguistics and the study of Computer Science.

Finally, counsel asserts that the beneficiary's degree is related to the required degree, as the beneficiary is employed in the field of Information Technology. Counsel submitted a letter from Jason Armstrong of Aerotek which states that the beneficiary interned with the company while he was completing his Ph.D at the University of Kansas and "his duties included database design and application development, database analysis, and other database-related activities assigned by the client."

Counsel's assertions are persuasive. To determine whether a beneficiary is eligible for a third preference immigrant visa, the Service must ascertain whether the alien is in fact qualified for the certified job. The Service will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree. In evaluating the beneficiary's qualifications, the Service must look to the job offer portion of the labor certification to determine the required qualifications for the position; the Service may not ignore a term of the labor certification, nor may it impose additional requirements. See Matter of Silver Dragon Chinese Restaurant, 19 I&N Dec. 401, 406 (Comm. 1986). See also Madany v. Smith, 696 F.2d 1008 (D.C. Cir. 1983); K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006 (9th Cir. Cal. 1983); Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey, 661 F.2d 1 (1st Cir. 1981).

Here, block 14 of the Form ETA-750 plainly requires a Bachelor of Science degree with a major field of study in "Computer Science or [a] related field." The petitioner has convincingly established on appeal that the beneficiary's specific degree is related to the study of computer science and information technology. The beneficiary is qualified for the proffered position as he possesses the specific degree required by the labor certification, a master's degree in a field related to computer science. Accordingly, the beneficiary is eligible for classification under section 203(b)(3)(A)(ii) as a professional, based on the current labor certification.

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 sustained that burden.

ORDER: The decision of the director dated September 26, 2001 is withdrawn. The appeal is sustained and the petition is approved.