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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B5

DATE: FEB 03 2012

OFFICE: TEXAS SERVICE CENTER

FILE: 

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center (Director). It is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be sustained, and the petition approved.

The petitioner is a hospital. It seeks to permanently employ the beneficiary as an internist and to classify him as an advanced degree professional 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 is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL).

As defined in the regulation at 8 C.F.R. § 204.5(k)(2):

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The Director denied the petition on the ground that the beneficiary did not have the advanced degree specified on the labor certification (ETA Form 9089), nor a bachelor's degree and five years of progressive post-baccalaureate experience.

The appeal is properly filed and timely and makes specific allegations of error in law or fact. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its ETA Form 9089, as certified by the DOL and submitted with the instant petition. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The priority date is the date the labor certification application was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). In this case the ETA Form 9089 was accepted for processing by the DOL on February 21, 2008.

The education and experience required for the proffered position – internist – are set forth in Part H of the ETA Form 9089. Lines 4-A, 4-B, and 5 specify that a Doctor of Medicine degree (M.D.) and 36 months of training in the job opportunity are required to qualify for the job. Line 9 specifies that a foreign educational equivalent is acceptable.

The documentation of record shows that the beneficiary completed medical studies at Bangalore University in India with an examination in March 1997, and was granted a Bachelor of Medicine and Bachelor of Surgery degree on February 22, 1999. Based on the entire record – including information from the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), indicating that a Bachelor of Medicine / Bachelor of Surgery in India is awarded upon completion of 4.5 to 5 years of tertiary study plus one year of internship beyond the Higher Secondary Certificate (equivalent to a

U.S. high school diploma) and is equivalent to an M.D. (Doctor of Medicine) in the United States – the AAO determines that the beneficiary’s Indian degree is comparable to a U.S. Doctor of Medicine. Thus, the beneficiary has the requisite educational degree for the proffered position, as specified in the labor certification. Furthermore, the beneficiary’s foreign medical degree may qualify as an advanced degree for purposes of section 203(b)(2) of the Act.

The documentation of record also shows that the beneficiary served two stints with the petitioner as a resident in internal medicine – from July 1, 2001 to June 11, 2002, and from January 31, 2003 to April 30, 2005. Since these two residencies totaled more than three years, the beneficiary meets the labor certification requirement of 36 months of training in the job opportunity. The record also indicates that the beneficiary became board certified in internal medicine before the priority date and has passed the U.S. Medical Licensing Examination (Steps 1, 2, and 3).

Thus, the beneficiary meets the educational and training requirements for the proffered position, as specified in the labor certification. Accordingly, the petitioner has overcome the Director’s ground for denial. The Director’s decision will therefore be withdrawn.

The burden of proof in these proceedings rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The Director’s decision of October 27, 2008 is withdrawn. The appeal is sustained. The petition is approved.