

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

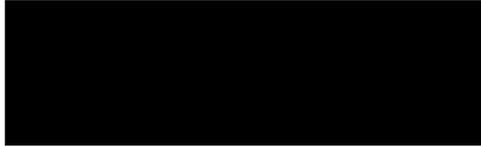
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

B5



DATE: **MAR 15 2012** OFFICE: NEBRASKA 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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). The petitioner filed an appeal, which was dismissed by the Chief, Administrative Appeals Office (AAO). Exercising its authority under 8 C.F.R. § 103.5(a)(5)(i), the AAO will reopen the proceeding on service motion, reconsider its decision, and withdraw its dismissal of the appeal. The AAO will issue a new decision sustaining the appeal, and approving the petition.

The petitioner is a semiconductor manufacturing company. It seeks to employ the beneficiary permanently in the United States as a market development engineer, and 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, a Form ETA 750, Application for Alien Employment Certification, approved United States Department of Labor (DOL), accompanied the petition.

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.

To be eligible for approval under the immigrant visa petition (Form I-140), the beneficiary must have all the education, training, and experience specified on the underlying labor certification as of the petition's priority date, which is the date the labor certification application was accepted for processing by the DOL. See 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977).<sup>1</sup> In this case, the priority date is December 3, 2004.

The minimum education, training, and experience required to perform the duties of the market development engineer are set forth in Part A, section 14, of the labor certification. As specified therein, the job requires a master's degree in electrical engineering and three years of experience in the job offered or in a related occupation.

Academic documentation in the record shows that the beneficiary, a French national, earned the following post-secondary credentials after receiving his "Diplome du Baccalaureat Technologic" from the Academie de Clermont-Ferrand in 1989:

---

<sup>1</sup> If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date is clear.

- “Diplome d’Etudes Universitaires General (DEUG)” at the University of Clermont-Ferrand after a two-year course of study (1990-1992).
- “Licence es Sciences” in Electronics, Electrical Engineering and Automation at the University of Clermont-Ferrand after a one-year course of study (1993-1994).
- “Maitrise” in Electronics, Electrical Engineering and Automation at the University of Bordeaux after one-year course of study (1994-1995).
- “Diplome d’Etudes Superieures Specialisees (DESS)” in Microelectronics at the University of Bordeaux after a one-year course of study (1995-1996).

The documentation of record (letters from employers past and present) shows that the beneficiary had the following jobs from 1996 through the priority date in December 2004:

- Engineering internship with the petitioner in [REDACTED] from February 5 to July 31, 1996.
- Analog consultant with [REDACTED] from January 20, 1997 to January 7, 2000.
- Market development engineer with the petitioner in [REDACTED] California, from January 2000 through December 2004 and beyond.

The Director denied the petition on July 29, 2008. While finding that the beneficiary had the requisite three years of employment experience specified in the labor certification, the Director determined that the beneficiary’s highest educational credential – the DESS in Microelectronics – was not equivalent to a U.S. master’s degree, and thus did not satisfy the minimum educational requirement of the labor certification. The AAO affirmed the Director’s decision in its dismissal of the appeal on November 14, 2011.

The AAO has reviewed the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is “a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world.” See <http://www.aacrao.org/About-AACRAO.aspx>. Its mission “is to serve and advance higher education by providing leadership in academic and enrollment services.” *Id.* EDGE is “a web-based resource for the evaluation of foreign educational credentials.” See <http://edge.aacrao.org/info.php>. Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO’s National Council on the Evaluation of Foreign Educational Credentials.<sup>2</sup> If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* U.S. Citizenship and Immigration Services (USCIS) considers EDGE to be a

---

<sup>2</sup> See *An Author’s Guide to Creating AACRAO International Publications* available at [http://www.aacrao.org/Libraries/Publications\\_Documents/GUIDE\\_TO\\_CREATING\\_INTERNATIONAL\\_PUBLICATIONS\\_1.sflb.ashx](http://www.aacrao.org/Libraries/Publications_Documents/GUIDE_TO_CREATING_INTERNATIONAL_PUBLICATIONS_1.sflb.ashx).

reliable, peer-reviewed source of information about foreign credentials equivalencies.<sup>3</sup>

EDGE evaluates the U.S. equivalency of the beneficiary's post-secondary degrees as follows:

- The "DEUG" (two-year program) is comparable to two years of university study in the United States.
- The "Licence" (one-year program following a DEUG) is comparable to one year of university study in the United States.
- The "Maitrise" (one-year program building on the previous two) is comparable to a bachelor's degree in the United States.
- The DESS (one-year post-graduate program) is comparable to a master's degree in the United States.

Pursuant to its authority under 8 C.F.R. § 103.5(a)(5)(i) to reopen proceedings and reconsider prior decisions, the AAO hereby withdraws its decision dismissing the appeal. The AAO determines that the beneficiary's DESS in Microelectronics is comparable to a U.S. master's degree in microelectronics or electrical engineering. Thus, it meets the educational requirement of the labor certification and qualifies the beneficiary for the position described in the immigrant visa petition. Therefore, the only ground for denying the petition, and dismissing the appeal, has been overcome.

Based on the foregoing analysis, the AAO will sustain the appeal, and approve the petition.

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 AAO's decision of November 14, 2011, is withdrawn. The appeal is sustained. The petition is approved.

---

<sup>3</sup> In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.