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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: **MAY 02 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.

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, Texas Service Center (Director). It is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a healthcare company. It seeks to permanently employ the beneficiary in the United States as a “data mining consultant senior” 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). The regulation at 8 C.F.R. § 204.5(k)(2) defines “advanced degree” as follows:

*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.

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).<sup>1</sup>

The Director denied the petition on the ground that the beneficiary did not have a U.S. master's or bachelor's degree, or a foreign equivalent degree to a U.S. master's or bachelor's degree. Therefore, he was not eligible for classification as an advanced degree professional under section 203(b)(2) of the Act and did not meet the minimum educational requirements specified on the labor certification (ETA Form 9089) to qualify for the job. A timely appeal was filed.

On February 23, 2012, the AAO sent a notice of intent to dismiss and request for evidence (NOID/RFE) to the petitioner, with a copy to counsel. The AAO reviewed the evidence of record in regard to the U.S. equivalency of the beneficiary's educational credentials from India, and advised the petitioner of information in the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), which backed the Director's previous finding that the beneficiary's academic credentials – including a three-year Bachelor of Commerce degree from Panjab University and a two-year Higher Diploma in Software Engineering from [REDACTED] – were not equivalent, either individually or in combination, to a U.S. bachelor's degree in management information systems, as required on the labor certification (ETA Form 9089). The AAO also requested that additional evidence be submitted to show that the beneficiary had six years of experience in data mining or a related occupation prior to beginning work with the petitioner in December 2003, as required by the terms of the labor certification. The petitioner was afforded 45 days to respond to the NOID/RFE and submit additional evidence.

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<sup>1</sup> The ETA Form 9089 was filed with the DOL on July 27, 2007 (the priority date), and certified by the DOL on December 14, 2007.

The petitioner did not respond within the 45-day period specified in the NOID/RFE (or any time since then). If a petitioner fails to respond to a notice of intent to deny or request for evidence by the required date, the petition may be summarily denied as abandoned, denied based on the record, or denied for both reasons. *See* 8 C.F.R. § 103.2(b)(13)(i). As further provided in 8 C.F.R. § 103.2(b)(14), the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition.

Since the petitioner has not responded to the NOID/RFE of February 23, 2012, the petition is deniable under the regulatory provisions cited above. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.