

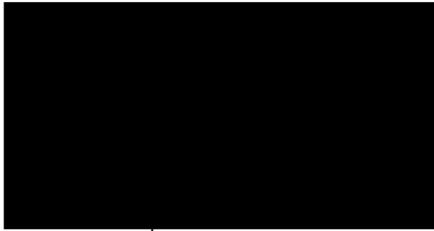


U.S. Department of Justice

Immigration and Naturalization Service

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



Public Copy

File:



Office: CALIFORNIA SERVICE CENTER

Date:

JAN 24 2000

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)

IN BEHALF OF PETITIONER:



Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner deals in the design, development, manufacturing, and sale of inter-networking systems. It seeks to employ the beneficiary permanently in the United States as a software engineer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as a member of the professions holding an advanced degree. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the petitioner had not established that the job offered requires a member of the professions holding an advanced degree or the equivalent or a person of exceptional ability.

On appeal, counsel submits a brief.

Section 203(b) of the Act states, in pertinent part, that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability.--

(A) In General.--Visas shall be made available...to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States...

Pursuant to Service regulations at 8 C.F.R. 204.5(k)(2), the term "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. (Emphasis added.)

The issue to be considered in this proceeding is whether the petitioner has established that the job offered requires a member of the professions holding an advanced degree. The petition is

accompanied by an Application for Alien Employment Certification, Form ETA 750, approved by the Department of Labor for the position of a software engineer. The petitioner indicates on the Form ETA 750 that the minimum requirements to perform the job duties of the proffered position are a bachelor's degree in C.S./C.E./E.E., or related, and six years of experience in an occupation involving software development, network engineer, systems engineer, or related. The petitioner also indicates on the Form ETA 750 under block #15 that it would accept a master's degree in C.S./C.E./E.E. or related field and four years of related experience.

The job offer portion of the application for alien employment certification must clearly indicate that an advanced degree or the equivalent, or an alien of exceptional ability, is required of entrants to the position. 8 C.F.R. 204.5(k)(4)(i). The critical element is block #14 on the job offer portion of the application for alien employment certification. The employer must show that at least a master's degree or its equivalent, or an alien of exceptional ability, is required for the job in this block.

In this case, the petitioner indicates that the education requirement for the proffered position is a bachelor's degree plus six years of experience. A bachelor's degree and six years of experience does not equate to an advanced degree. Therefore, it is concluded that the proffered position does not require a member of the professions holding an advanced degree or the equivalent.

As the petitioner has not established that the proffered position requires either a professional holding an advanced degree or the equivalent, or a person of exceptional ability, the petition may not be approved under section 203(b)(2) of the Act.

In visa petition proceedings, the burden of proof is on the petitioner to establish eligibility for the benefit sought by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.