



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: WAC 99 138 53064 Office: CALIFORNIA SERVICE CENTER Date: MAR 30 2000

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[Redacted]

identifying data in order 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 The decision of the director will be withdrawn, the appeal will be sustained, and the petition will be approved.

The petitioner is a software development company. 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 required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the job offered did not require a member of the professions holding an advanced degree.

On appeal, counsel states that the director misinterpreted the minimum educational requirements for the proffered position.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a U.S. academic or professional degree or a foreign equivalent degree above the baccalaureate level. The equivalent of an advanced degree is either a U.S. baccalaureate or foreign equivalent degree followed by at least five years of progressive experience in the specialty. 8 CFR 204.5(k)(2).

The beneficiary in this matter possesses a foreign degree equivalent to a United States Bachelor of Science in Mathematics. The petitioner has also submitted evidence to demonstrate that the beneficiary has more than five years of progressive experience as a software engineer. Consequently, he qualifies as an advanced degree professional. The issue to be determined here is whether this particular software engineer position requires a member of the professions holding an advanced degree or its equivalent. The key to this determination is found on Form ETA-750 Part A. This section of the application for alien labor certification, "Offer of Employment," describes the terms and conditions of the job offered. Blocks 14 and 15 of the ETA-750 Part A must establish that the position requires an employee with either a master's degree or a U.S. baccalaureate or foreign equivalent degree followed by at least five years of progressive experience in the specialty. 8 CFR 204.5(k)(4)(i).

The terms, "MA," "MS," "master's degree or equivalent" and "bachelor's degree with five years of progressive experience," all equate to the educational requirements of a member of the professions holding an advanced degree. The threshold for granting classification as an advanced degree professional will be satisfied when any of these terms appear in block 14.

It is also important that the ETA-750 be read as a whole. In particular, if the education requirement in block 14 includes an asterisk (*) or other footnote, the information included in the note must be included in determining whether the educational requirement, as a whole, shows that an advanced degree or the equivalent is the minimum acceptable qualification for the position.

The ETA-750 Part A contained in the record reflects the following:

Item 14: Education – M.S. or B.S.* in computer science or a related field.
Experience – 3 or 5* years in the job offered.

Item 15: *Positions require Master of Science in Computer Science or a related field and three years of software engineering experience, or Bachelor of Science in Computer Science or a related field and five years of software engineering experience.

Experience must include: 1) C; and 2) SQL; and 3) Unix.

In this matter, block 14 includes an asterisk following "B.S." that refers to 5 years experience and to block 15. At block 15, it is apparent that the employer will consider a candidate with a "Bachelor's of Science in Computer Science or a related field and five years of software engineering experience." The experience required is in the job offered, the duties of which are described at block 13 of the ETA-750 as "[d]esign and develop test specification features for RDBMS software products and applications. Develop SQL based test applications on Windows and Unix platforms."

One may reasonably infer that five years of experience as a computer software engineer performing these duties would necessarily be progressive, due to the highly technical nature of the work and the rate of change in the computer field. The determination to approve the petition would have been made simpler if the petitioner had required "progressive" experience on the labor certification, but the petitioner's failure to use that word may be excused in this case, where the nature of the work to be performed is inherently progressive. This position, at a minimum, requires a professional holding the equivalent of an advanced degree.

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

ORDER: The decision of the director dated January 7, 2000 is withdrawn. The appeal is sustained and the petition is approved.