

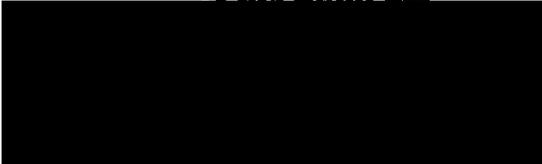


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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

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prevent clearly unwarranted
invasion of personal privacy



File: EAC-00-200-52704 Office: Vermont Service Center

Date: JAN 06 2003

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:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that 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 that 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks to classify the beneficiary 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. The petitioner seeks to employ the beneficiary as a software engineer. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the beneficiary does not qualify as an advanced degree professional.

On appeal, counsel argues that the beneficiary has foreign degree equivalent to a bachelor's degree from an accredited U.S. college and five years post-baccalaureate progressive experience.

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.

8 C.F.R. 204.5(k)(2) permits the following substitution for an advanced degree:

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.

The petitioner claims that the beneficiary has the equivalent of a baccalaureate degree plus at least five years of progressive experience. The petitioner initially submitted the beneficiary's bachelor of engineering degree issued by the University of Gujarat, and an "Academic Evaluation" from the Trustforte Corporation evaluating that degree as equivalent to a U.S. Bachelor of Science degree in engineering. In response to the director's request for additional documentation, the petitioner submitted employment letters reflecting that, after the beneficiary obtained his degree in November 1990, he worked as a software engineer for Transpek Industry from November 1990 to April 1995 and from October 1996 to February 1998, and for Bhuvan Tripura Industry from May 1995 to October 1996.

In his final decision, the director concluded that while the petitioner had submitted employment letters for the beneficiary, those letters did not provide a specific and comprehensive description of the beneficiary's duties. Thus, the director determined that the petitioner had not established that the beneficiary's experience was "progressive."

On appeal, the petitioner submits new employment letters and previous decisions issued by this office that state:

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.

While these are not precedent decisions, we agree with our former statements regarding this issue. Thus, the petitioner has established that the beneficiary has five years of progressive experience and, thus, qualifies as an advanced degree professional as defined in the regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

ORDER: The appeal is sustained and the petition is approved.