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U.S. Department of Justice

Immigration and Naturalization Service

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

PUBLIC COPY

[redacted]

File: WAC-00-160-53735 Office: California Service Center Date: JAN 13 2003

IN RE: Petitioner: [redacted]
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)

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:

[redacted]

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

Elizabeth Hayward
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant 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 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 consultant. 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 the equivalent of an advanced degree. The petitioner submits a new evaluation by the American Evaluation Institute.

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.

(Emphasis added.) 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 degree from Shanghai Nanshi District Sparetime University awarded in 1988. The petitioner submitted an academic evaluation that provides the following information:

> In summary, it is the judgment of the Foundation that [the beneficiary] has the equivalent of completion of four years of *part-time* studies from a college or university in the United States that is *not* regionally accredited and has, *as a result of his progressively more responsible employment experiences* (3 years of experience = 1 year of university-level credit), an educational background the equivalent of an individual with a bachelor's degree in operations management from an accredited college or university in the United States. In addition, as a result of his having the equivalent of a U.S. baccalaureate degree followed by at least five years of progressive experience in the specialty, [the beneficiary] also has an educational background the equivalent of an individual with a master's degree in operations management from an accredited college or university in the United States.

(Emphasis added.) Based on this statement, the director concluded that the beneficiary did not have a foreign *degree* that was equivalent to a U.S. baccalaureate degree. On appeal, counsel argues that the Service has already accepted that the beneficiary has the equivalent of a bachelor's degree when it approved a nonimmigrant visa petition in behalf of the beneficiary. The petitioner submits a new evaluation from the American Evaluation Institute that provides:

> The education of [the beneficiary] includes study at the Shanghai Nanshi District Sparetime University from September of 1984 to July of 1988. This program is equivalent to an American post-secondary diploma in electronic automation. Based on certificates, transcripts and nineteen (19) years of progressively higher employment experiences in operations management and supervision, the credentials of [the beneficiary] is equivalent to an Accredited American Master of Science in Business Administration Degree.

While the evaluation provides that the beneficiary's degree is equivalent to a U.S. "post-secondary diploma," the evaluation does not indicate that the beneficiary's degree is equivalent to a U.S. bachelor's degree. Matter of Sea, Inc., 19 I&N 817 (Commissioner 1988), provides:

> This Service uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight.

As stated above, the beneficiary must have a degree that is the equivalent of a U.S. baccalaureate degree. A combination of a lesser degree and experience that, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree does not meet the regulatory requirement of a foreign equivalent degree. We note that this is a different standard than that for the H-1B nonimmigrant visa. 8 C.F.R. 214.2(h)(4)(iii)(D)(5). In light of the above, we concur with the director that the beneficiary does not have the equivalent of a U.S. baccalaureate degree. As such, the beneficiary's subsequent work experience cannot be considered post-baccalaureate experience equivalent to an advanced degree. Thus, the beneficiary is not 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 not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.