



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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File: WAC 99 140 51643

Office: CALIFORNIA SERVICE CENTER

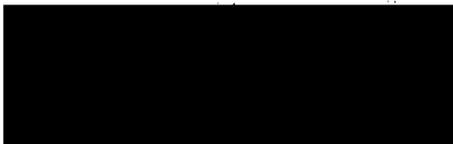
Date: JAN 25 2001

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

IN BEHALF OF PETITIONER:



Identification 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

Mary C. Mulrean, Acting 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 computer software business which seeks to employ the beneficiary permanently in the United States as a software engineer. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined the petitioner had not established that the beneficiary had the requisite education as of November 30, 1998, the filing date of the visa petition.

On appeal, counsel for the petitioner provides a brief and additional documentation.

Section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled or unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

8 C.F.R. 204.5(l)(3) states, in pertinent part:

(ii) *Other documentation* -- (A) *General*. Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) *Skilled workers*. If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupational designation. The minimum requirements for this classification are at least two years of training or experience.

(C) *Professionals*. If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the

professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation.

The issue to be considered in this proceeding is whether the petitioner has established that the beneficiary met the minimum requirements of the proffered job as of November 30, 1998. 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 computer science or in a related field. The petitioner further states, under block #15, that the applicant must have:

Educational or experience background must include: 1) RDBMS; and 2) C.

The beneficiary in this matter possesses a foreign degree equivalent to a United States Bachelor of Science degree in Agricultural Engineering. The beneficiary also possesses a United States Master of Science degree in Civil and Environmental Engineering and work experience utilizing RDBMS and C. Both degrees were awarded prior to November 30, 1998. The issue to be determined here is whether the beneficiary's degrees are in a field related to computer science.

The petitioner has provided two educational evaluations which state that the beneficiary's Bachelor of Science degree in Agricultural Engineering and his Master of Science degree in Civil and Environmental Engineering are closely related to a degree in computer science. The extensive use of computer science in the beneficiary's engineering curricula is documented in the record. The evaluations appear reasonable and will be accepted. Therefore, the beneficiary has met his educational requirements and the petition may be approved.

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 August 3, 1999 is withdrawn. The appeal is sustained and the petition is approved.