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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

[redacted]

File: WAC 01 220 51466 Office: California Service Center Date: FEB 25 2003

IN RE: Petitioner: [redacted]
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: [redacted]

PUBLIC COPY

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

Helen E. Crawford for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The case will be dismissed.

The petitioner is an information systems research and development firm. It seeks to employ the beneficiary permanently in the United States as a project manager. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The Acting Director determined that the petitioner had not established that the beneficiary is a member of the professions pursuant to 8 C.F.R. 204.5(l)(3)(ii)(c).

On appeal, counsel submits a brief.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), 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 labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(II), provides for granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

The Acting Director considered the petition as a request for a preference classification pursuant to section 203(b)(3)(A)(ii) of the Act. The Acting Director found no evidence that the beneficiary holds a baccalaureate degree, and denied the petition.

On appeal, counsel notes that this petition was filed for a skilled worker or professional and that, having determined that the beneficiary does not qualify as a professional, the Acting Director should have determined whether the preference classification ought to be granted to the beneficiary as a skilled worker.

The ETA 750 filed in this matter calls for a "B.A. or B.S. or equivalent . . . (in) computer science or (a) related field." Neither the statute nor the regulations provide for the consideration of a degree equivalency in the context of an immigrant petition. The requirement can only be interpreted to require a U.S. bachelor's degree or an equivalent foreign degree. A degree equivalency, whether based on work experience or on a combination of lesser degrees, will not suffice to qualify a

beneficiary as an immigrant under section 203(b)(3)(A)(i) or section 203(b)(3)(A)(ii). The beneficiary has no such degree, and is ineligible for the proffered position.

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.