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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

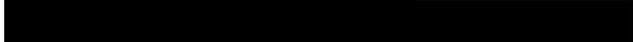
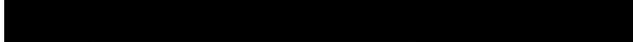


U.S. Citizenship
and Immigration
Services



B5

DATE: APR 30 2012 OFFICE: NEBRASKA SERVICE CENTER FILE: 

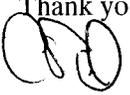
IN RE: Petitioner: 
Beneficiary: 

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)

ON BEHALF OF PETITIONER:


INSTRUCTIONS:
Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). It is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a software development and IT (information technology) development company. It seeks to permanently employ the beneficiary in the United States as a software engineer and classify him as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The regulation at 8 C.F.R. § 204.5(k)(2) defines “advanced degree” as follows:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. 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. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL).

The Director denied the petition on the ground that the beneficiary did not have the requisite education for the job – a master's degree in business administration (MBA) – as specified on the ETA Form 9089 (labor certification).¹

On February 23, 2012, the AAO sent the petitioner a notice of intent to dismiss (NOID), with a copy to counsel. The AAO advised the petitioner of information in the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), which backed the Director's finding that the beneficiary's academic credentials – including a three-year Bachelor of Science degree from Osmania University, a two-year Master of Business Administration from Osmania University, and a Post Graduate Diploma (PGD) in Computer Applications from the Login Institute of Information Technology – were not equivalent, either individually or in combination, to a U.S. master's degree in business administration or any alternative field identified on the labor certification. According to EDGE, the beneficiary's MBA from Osmania University, following his bachelor of science degree, is comparable to U.S. bachelor's degree in business administration, and the PGD in computer applications represents at most another baccalaureate-level degree in the United States. The petitioner was afforded 45 days to respond to the NOID.

The petitioner did not respond within the 45-day period specified in the NOID (or any time since then). If a petitioner fails to respond to a notice of intent to deny or request for evidence by the

¹ The ETA Form 750 also stated that the master's degree (or “foreign educational equivalent”) could be in the alternative fields of science, computer science, mathematics, or engineering.

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required date, the petition may be summarily denied as abandoned, denied based on the record, or denied for both reasons. *See* 8 C.F.R. § 103.2(b)(13)(i).

Since the petitioner has not responded to the NOID of February 23, 2012, the petition is deniable under the regulatory provision cited above. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.