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20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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Services

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FILE: WAC 03 161 51105 Office: CALIFORNIA SERVICE CENTER Date: **JAN 06 2005**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a wholesaler and retailer of Indian goods and products that seeks to employ the beneficiary as an information specialist. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the beneficiary did not qualify to perform the duties of a specialty occupation. On appeal, the petitioner submits a brief stating that the beneficiary is qualified to perform the duties of a specialty occupation.

The issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of the proffered position.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through

progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program) for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The offered position is essentially that of a computer systems analyst or database administrator. The *Handbook* notes that there is no universally accepted way to prepare for a job as a systems analyst, computer scientist, or database administrator, but most employers place a premium on some formal college education. While a bachelor's degree is a prerequisite for many jobs, others may require only a two-year degree. For more technically complex jobs, persons with graduate degrees are preferred. Many employers seek applicants who have a bachelor's degree in computer science, information science or management information systems (MIS). MIS programs are usually part of a business school or college and differ considerably from computer science programs, emphasizing business and management-oriented course work and business computing courses. Employers are increasingly seeking individuals with a master's degree in business administration with a concentration in information systems as more firms move their business to the Internet.

The petitioner seeks to qualify the beneficiary by establishing that the beneficiary meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). In support of this assertion, the petitioner submitted an educational evaluation from a credentials evaluation service, the International Education Research Foundation, Inc. That evaluator found that the beneficiary completed studies at the 202 K.H.K. Institute of Engineering Dharwad,

which was the United States equivalent of 27 units of undergraduate coursework. The beneficiary then completed additional studies at Karnataka State Open University earning the degree of Master of Commerce. The evaluator noted, however, that admission to the master's program requires completion of a bachelor's degree, but that the beneficiary was admitted without having first obtained her bachelor's degree. The record does not explain this discrepancy. The evaluator equated these credentials to be equivalent to a Master of Commerce degree offered through accredited distance education programs in the United States. The beneficiary then completed additional studies at [REDACTED] University, College of Distance Education located in [REDACTED] India. Those studies [REDACTED] Open University and Madurai Kamaraj University) were considered equivalent to fifteen semester hours of undergraduate coursework and 20 hours of graduate coursework at accredited universities in the United States. The evaluator then issued the following equivalency summary:

It is the judgment of the International Education Research Foundation, Inc. that [the beneficiary] has the U.S. equivalent of twenty seven semester units of undergraduate coursework, and the Master of Commerce, fifteen semester units of undergraduate coursework and twenty semester units of graduate coursework offered through distance education programs at regionally accredited colleges and universities.

The evaluation is of little evidentiary value as it contains inconsistencies which the record does not explain. The evaluator notes that the beneficiary completed only 27 hours of undergraduate course work before taking graduate courses in a program which requires a bachelor's degree for admission. The evaluator states that the beneficiary was admitted to the program without being formally qualified for admission. This brings into the question the legitimacy of the college credit awarded and the institution issuing the credit. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Even if the evaluator's opinion were accepted without question, the beneficiary has not obtained the equivalent of a bachelor's degree as the evaluator finds that she has obtained the equivalent of only 62 hours of college credit.

The petitioner then urges on appeal, that the beneficiary's course work, coupled with her past work experience and training, are equivalent to a Master's Degree in Business Administration with an emphasis in information systems. An individual's past work experience, however, can only be evaluated for United States degree equivalence purposes by an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The record contains no such evaluation. The petitioner has not established that the beneficiary's education, training, and/or progressively responsible work experience is equivalent to a United States baccalaureate or higher degree.

As previously noted, however, it appears that the proffered position may be performed by individuals with less than a baccalaureate level education and does not qualify as a specialty occupation. It has not been established that the position requires a minimum of a bachelor's degree. Thus, all that can be said of the beneficiary's qualifications to perform the duties of the offered position is that the petitioner deems the beneficiary qualified. That decision is within the petitioner's authority to make. Nevertheless, because the

beneficiary does not have a baccalaureate or higher degree or its equivalent in the specialty, the petition may not be approved. The petitioner has failed to overcome the director's finding that the beneficiary is ineligible to perform the duties of a specialty occupation. Under Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), 8 C.F.R. § 214.2(h)(4)(iii)(C), in order for a beneficiary to qualify to perform services in a specialty occupation, he or she must have a baccalaureate or higher degree or its equivalent in the specialty. The petitioner has not established the beneficiary's eligibility.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.