

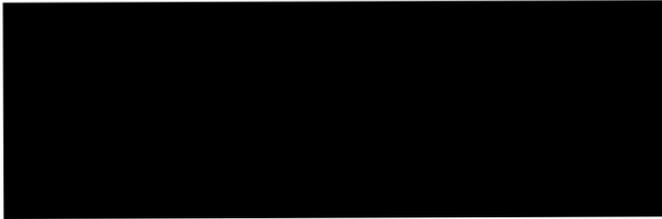
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. 3000
Washington, DC 20529



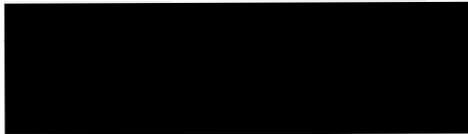
U.S. Citizenship
and Immigration
Services

PUBLIC COPY



FILE: LIN 04 153 50706 Office: NEBRASKA SERVICE CENTER Date: **JUN 23 2006**

IN RE: Petitioner:
Beneficiary:



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 materials have been returned
to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is a computer software consulting company. It seeks to employ the beneficiary as a programmer analyst and to classify him 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 on the ground that the record failed to establish that the beneficiary is qualified to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), provides that an alien must have the following credentials to be qualified to perform the services of a specialty occupation:

- (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.

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

- (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.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) the appeal (Form I-290B) and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a software consulting company that provides computer systems integration and development services to commercial organizations. The petitioner states that its business was established in 1998, has 20 employees and gross annual income of approximately \$5 million, and proposes to employ the beneficiary as a programmer analyst for three years at an annual salary of \$50,000. The duties of the proffered position, and the percentage of time required by each duty, are listed as follows in a letter accompanying the petition:

- 25% Analyze software requirements to determine feasibility of design with time and cost constraints.
- 5% Consult with hardware engineers and other engineering staff to evaluate interface between hardware and software, and operational and performance requirements of overall system.
- 20% Formulate and design software system, using scientific analysis and mathematical models to predict and measure outcome and consequences of design.
- 40% Develop and direct software systems testing procedures, programming and documentation.
- 5% Consult with customer concerning maintenance of software system.
- 5% Coordinate installation of software system.

The minimum educational requirement for the proffered position, the petitioner declares, is a bachelor's degree in engineering, computer science, statistics, mathematics, economics, commerce, or business. According to the petitioner, the beneficiary is qualified for the position by virtue of his diploma in automotive engineering from the State Board of Technical Education and Training in India, awarded in 1997, together with his bachelor of engineering degree in the mechanical production and industrial branch from the Andhra University in India, awarded on December 6, 2002. A report from the Multinational Education & Information Services, Inc. (MEIS), a foreign educational credentials evaluation service in Atlanta, Georgia, which was submitted with the petition, states that the beneficiary's education is equivalent to a bachelor of engineering degree in mechanical production and industrial engineering from an accredited U.S. college or university.

In his decision the director referred to information in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* about industrial and mechanical engineers and determined that a degree in those fields of engineering was insufficient preparation for a position in the computer field. Since the beneficiary's education and experience, as indicated in the credentials evaluation, is not equivalent to a degree in the field of information technology or computer science, the director concluded that the

beneficiary did not have the necessary education to perform the duties of a computer systems analyst. The director found that the beneficiary did not qualify to perform the services of the specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(C).

On appeal the petitioner submits a new evaluation from MEIS of the beneficiary's education and work experience. The evaluation concludes that the beneficiary's educational credentials (previously discussed), the computer related courses he took as part of his engineering degree and from Tate Infotech Engineering in India, and his one year plus of training and professional experience in industrial engineering, software engineering, systems analysis, and computer program design and development, are equivalent to a bachelor of engineering degree in mechanical engineering and computer information systems from an accredited college or university in the United States. According to the petitioner, the beneficiary's U.S. degree equivalence qualifies him to perform the services of a programmer analyst.

CIS routinely consults the DOL *Handbook* as an authoritative sources about the duties and educational requirements of particular occupations. As discussed in the *Handbook*, 2006-07 edition, at 105 and 116, programmer-analysts combine the duties of computer programming and systems analysis. With respect to the educational requirements of the occupation the *Handbook* states the following about computer programmers:

Bachelor's degrees are commonly required, although some programmers may qualify for certain jobs with two-year degrees or certificates. The associate degree is a widely used entry-level credential for prospective computer programmers. Most community colleges and many independent technical institutes and proprietary schools offer an associate degree in computer science or a related information technology field.

[I]n the absence of a degree, substantial specialized experience or expertise may be needed. Even when hiring programmers with a degree, employers appear to place more emphasis on previous experience.

Some computer programmers hold a college degree in computer science, mathematics, or information systems, whereas others have taken special courses in computer programming to supplement their degree in a field such as accounting inventory control, or another area of business . . . As indicated by the following tabulation, more than two-thirds of computer programmers had a bachelor's or higher degree in 2004:

Highs school graduate or less – 8.3%; Some college, no degree – 14.1%; Associate degree – 10.2%; Bachelor's degree – 49.1%; Graduate degree – 18.3%.

Id. at 105-06. With regard to the educational requirements of computer systems analysts, the *Handbook* states the following:

[W]hile there is no universally accepted way to prepare for a job as a systems analyst, most employers place a premium on some formal college education. Relevant work experience also is very important. For more technically complex jobs, persons with graduate degrees are preferred.

Many employers seek applicants who have at least a bachelor's degree in computer science, information science, or management information systems (MIS) Employers are increasingly seeking individuals with a master's degree in business administration (MBA), with a concentration in information systems, as more firms move their business to the Internet.

Despite employers' preference for those with technical degrees, persons with degrees in a variety of majors find employment as system analysts. The level of education and type of training that employers required depend on their needs

Thus, the *Handbook* indicates that a range of degrees is suitable for entry into computer programming, systems analyst, and programmer/analyst positions, that associate degrees and vocational training certificates suffice for some positions, and that some employers view relevant work experience in the computer field as the most important attribute of job applicants, which can substitute for the lack of any degree. Based on the foregoing information, the AAO determines that the beneficiary's bachelor of engineering degree in the mechanical production and industrial branch from the Andhra University in India, which the initial evaluation report from MEIS declared to be the equivalent of a bachelor of engineering degree in mechanical production and industrial engineering from an accredited U.S. college or university, qualifies him to perform the services of a programmer analyst in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

The AAO notes, however, that the director did not analyze the question of whether the proffered position meets the statutory and regulatory criteria of a specialty occupation. The petitioner indicates that the beneficiary would provide services to one or more client companies, but has not identified the client(s), nor indicated whether the beneficiary will work in-house or at client worksites, nor described the specific tasks that would be performed on behalf of such client(s) and (if multiple clients are involved) their duration.

The AAO concludes that this matter must be remanded for a determination by the director as to whether the proffered position qualifies as a specialty occupation. The director may afford the petitioner reasonable time to provide evidence pertinent to that issue, as well as any other evidence the director may deem necessary. The director shall then issue a new decision based on the evidence of record with respect to whether the programmer analyst position is a specialty occupation. As always, the burden of proof rests with the petitioner. See section 291 of the Act 8 U.S.C. § 1361.

ORDER: The director's decision of November 9, 2004 is withdrawn. The petition is remanded to the director for entry of a new decision. If adverse to the petitioner, the decision shall be certified to the AAO for review.