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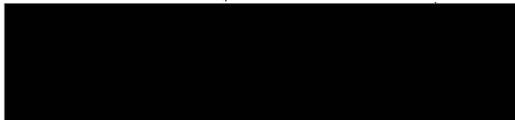
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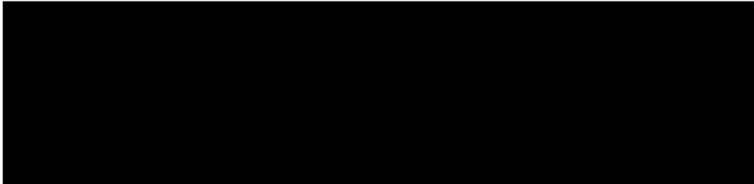
FILE: SRC 05 142 51171 Office: TEXAS SERVICE CENTER Date: **SEP 29 2006**

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:



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, Chief  
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 engaged in the business of selling computer hardware and electronics that seeks to employ the beneficiary as a network administrator. 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 is not qualified to perform the duties of a specialty occupation. On appeal, counsel files a brief and additional documentation.

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 full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and 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, an 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), equating the beneficiary's credentials to a United States baccalaureate or higher degree 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.

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation<sup>1</sup>;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

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<sup>1</sup> *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

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

The petitioner is seeking the beneficiary's services as a network administrator. The petitioner indicated in its letter of support of the initial petition that it requires the beneficiary to possess a bachelor's degree along with experience in the computer science industry. The petitioner noted that the beneficiary has the equivalent of a bachelor's degree in communications and that the degree combined with professional work experience in information technology (IT) positions is the equivalent of a U.S. baccalaureate degree in information systems. The director requested evidence to demonstrate that the beneficiary had attained the equivalent of a baccalaureate degree in information systems. The petitioner provided a letter from a previous employer covering the time period from 1999 until the present as its IT consultant and describing the beneficiary's duties. The petitioner also provided a letter from another of the beneficiary's previous employers covering the time period from January 1993 until February 1995 as a network administrator assistant and network administrator. The petitioner provided the requested transcripts of the beneficiary's undergraduate degree. The petitioner provided an evaluation summary from Educational Assessment, Inc. which states that the beneficiary's formal education, combined with professional training and work experience demonstrating his progressively more responsible positions in information systems has been found to be equivalent to a minimum of a bachelor's degree in information science from an accredited college or university in the United States. The petitioner asserted that the information and evidence provided was more than sufficient to demonstrate that the beneficiary has attained the equivalent of a bachelor's degree in information systems.

The director found that the evidence demonstrates that the beneficiary completed a bachelor of arts degree in journalism. The director noted that the petitioner provided no other documentation, in accordance with the criterion listed under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The director noted that not all work experience may be substituted for formal education. The director noted that experience, when substituted for education, must include the theoretical and practical application of specialized knowledge required at the professional level of the occupation and referred to *Matter of Sea, Inc.* 19 I&N Dec. 817 (Comm. 1988). The director determined that the petitioner has not established that the beneficiary qualifies to perform the duties of the specialty occupation.

On appeal, counsel contends that new evidence establishing that the beneficiary's work experience equates to formal education in the field of information systems has become available. Counsel submits an opinion letter from a professor with the University of Georgia. Counsel asserts that the author qualifies as a recognized authority within the meaning of 8 C.F.R. § 214.2(h) based on his credentials. Counsel notes that based on the new evidence, a new academic evaluation report has been submitted.

The Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) indicates that there are many paths of entry to a job as a computer support specialist or systems administrator. The *Handbook* notes that for systems administrator, many employers seek applicants with bachelor's degrees, although not necessarily in a computer related field. Based on this information, the AAO notes that not all network administrator positions are considered a specialty occupation requiring a bachelor's degree in a specific specialty.

The AAO notes that the beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. The petitioner establishes through a credentials evaluation that the beneficiary has the equivalent of a four-year degree from an accredited university with a degree in

communications, and a major in journalism. This degree is not related to the position of systems administrator. The petitioner submitted an evaluation of the beneficiary's experience and education from a foreign credentials evaluator. As noted above, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), equating the beneficiary's credentials to a United States baccalaureate or higher degree can be determined by 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. Foreign educational credentials evaluators may only evaluate an individual's foreign educational credentials – not training or work experience. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

CIS may itself determine whether a beneficiary is qualified under the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), which is a determination by the CIS that (1) 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 (2) that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The petitioner submitted two letters from the beneficiary's previous employers. The first letter is from Leia Brasil, a one-page letter that addresses the beneficiary's employment as "an IT consultant since February 1999" which does not provide specific, substantive information about any highly specialized systems networking or related knowledge that the beneficiary applied in the course of his work. The letter indicates that the beneficiary's responsibilities included: technical support to the employees including training; maintenance of hardware and software of both desktop and laptop computers; maintenance of the company's databank and back up data; installation, configuration and maintenance of the network and Ethernet; configuration of the internet accesses and website update. The second letter confirmed that the beneficiary worked from April 1993 to January 1995 as a network administrator assistant and was promoted to network administrator in January 1995 until February 1999. The author of this letter indicated that his duties were similar to those listed above and included managing servers, security systems, network hardware and equipment, ensuring network connectivity, administering hardware and software upgrades, researching products and services to further develop network capacity and implement policies. The AAO finds that the letters provide no information about the level of specialized knowledge that the beneficiary applied, and no information about the degrees held by the subordinates, peers, and superiors with whom the beneficiary worked. Further, the petitioner has not submitted proof that the beneficiary has the recognition of expertise.

As requested, the AAO has analyzed the opinion of the University of Georgia professor as one submitted for consideration under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), that is, to determine its evidentiary value toward establishing that the beneficiary has achieved the equivalent of the degree required by the specialty occupation by a combination of (1) the beneficiary's education, specialized training, and/or work experience in areas related to the specialty and (2) recognition of expertise that the beneficiary has earned in the specialty occupation as a result of such training and experience.

The opinion letter from the University of Georgia professor finds that the beneficiary's work experience would amount to "four years of course work not only in basic information systems, but in advanced applications as well." The AAO notes that the professor has not asserted that he has authority to grant college credit based on experience and has not provided evidence of such authority. Thus, his opinion does not establish the beneficiary's qualifications based on his work experience. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Further, his opinion is based upon the aforementioned letters of employment, which are inadequate to establish the actual work that the beneficiary performed.

Counsel contends that the evaluator that prepared the work experience and educational evaluation is a recognized authority within the meaning of the regulations. The petitioner provided a statement of qualifications and experience of the evaluator. This statement indicates that the author of the evaluation has a Doctor of Education degree and has been the director of the women's studies program at the University of Georgia. This information does not support counsel's assertion that the author is would be considered a recognized authority in the field of computer science.

The petitioner did not submit evidence of the beneficiary's recognition of expertise in the specialty occupation from at least two recognized authorities in the occupation. The opinion letter from one professor would be insufficient to meet this criterion of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i). Letters from two employers are not evidence of recognition of expertise because the employers do not qualify as recognized authorities. The petitioner has not established that the two letters or any other submissions are sufficient documentation to satisfy any one of the criteria pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i)-(v).

The petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.