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U.S. Citizenship and Immigration Services

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[redacted]

FILE: EAC 06 181 53485 Office: VERMONT SERVICE CENTER Date: DEC 11 2007

IN RE: Petitioner: [redacted]
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:

[redacted]

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 Director, Texas Service Center, denied the nonimmigrant visa petition and the petitioner filed an appeal. The matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner provides software development and consulting services. It seeks to employ the beneficiary as a programmer analyst. Accordingly, it 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).

On January 16, 2007 the director denied the petition, determining that the record did not contain an evaluation of the beneficiary's academic credentials sufficient to establish that the beneficiary had obtained the equivalent of a baccalaureate or higher degree in the specific specialty required by the position. On appeal, counsel for the petitioner submits a second evaluation and asserts the evaluation shows that the beneficiary's foreign degree is equivalent to a United States baccalaureate degree.

The record of proceeding before the AAO contains: (1) the Form I-129 filed May 25, 2006 and supporting documentation; (2) the director's October 5, 2006 request for further evidence (RFE); (3) counsel's October 24, 2006 response to the director's RFE and supporting documentation; (4) the director's January 16, 2007 denial decision; and (5) the Form I-290B, counsel's statement, and a second evaluation in support of the appeal. The AAO reviewed the record in its entirety before rendering its decision.

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.

The record contains the following information regarding the petitioner's academic education:

A photocopy of a diploma issued by Sri Venkateswara University, Faculty of Engineering to Uma Devi V, Daughter of Raja Gopal Reddy V, for a Bachelor of Technology/Computer Science Engineering. The diploma indicates this individual is certified to be qualified to receive this degree at the examinations prescribed in April 2001. The diploma is dated March 4, 2003.

A photocopy of a one-page transcript issued to Uma Devi V indicating an examination set for September 1998. The transcript is dated November 30, 1998. The transcript covers the following subjects: English, mathematics I and II, physics and chemistry and physics and chemistry lab, engineering mechanics, engineering graphics, computer programming, and a workshop lab. The transcript indicates this is a "B. Tech. First Degree."

The beneficiary's resume that includes a list of training subjects for which the beneficiary indicates she had received training.

An October 24, 2006 evaluation of Umadevei Vempalli's educational experience prepared by Global Evaluation & Translation Services, Inc. indicating a review of a copy of a bachelor of technology degree issued by Sri Venkateswara University, India and a copy of original mark sheets from Sri Venkateswara University, India. The evaluator indicates university education for first degrees extends two to three years, three years for all bachelor's degrees, and professional programs extend from four to seven years. The evaluator indicates that the beneficiary's bachelor of engineering degree is a four-year course of study and is equivalent to four years of undergraduate study in computer applications from a regionally accredited university or college in the United States.

A February 13, 2007 evaluation prepared by Foreign Credential Evaluations, Inc. for Umadevi Vempalli (a.k.a. Uma Devi V.) indicating: that the evaluator had reviewed this individual's intermediate public examination, 1997 that is equivalent to a U.S. high school diploma; and that the evaluator had reviewed this individual's diploma from the Faculty of Engineering, Sri Venkateswara University, India, 14, March 2003, which attests that she was admitted to the degree, Bachelor of Technology in Computer Science Engineering. The evaluator indicates that this is a four-year program of post secondary study equivalent to the degree Bachelor of Science in Computer Science from a regionally accredited university in the United States.

The director determined that the first evaluation, dated October 24, 2006, contained inconsistencies, did not clearly establish whether the degree in question was a three-year or four-year degree, and did not identify the evaluator although Global Evaluation & Translation Services certified the evaluation. The director concluded that the petitioner had not established that the beneficiary holds the equivalent of a United States baccalaureate or higher degree from an accredited college or university required by the specialty occupation.

On appeal, counsel for the petitioner submitted the second evaluation dated February 13, 2007. Counsel asserts the second evaluation shows that the beneficiary has a bachelor of technology degree in computer science, engineering that is equivalent to a United States baccalaureate degree.

Counsel's assertion is not persuasive. As the director observed, the initial evaluation contained inconsistencies and did not clearly set out the evaluator's determination regarding the beneficiary's academic education. The AAO notes further that the initial evaluation did not contain an actual evaluation of the beneficiary's academic credentials; but rather conflicting conclusions, without an analysis of the substantive course work or the diploma issued to this particular beneficiary. Likewise, the AAO finds the second evaluation submitted to be inadequate. The evaluators conclude, without analysis, that the diploma reviewed is for a four-year program of post secondary study equivalent to Bachelor of Science in Computer Science degree from a regionally accredited university in the United States. The second evaluation does not contain evidence that the evaluator reviewed the beneficiary's coursework or otherwise substantiated that this particular individual studied in a four-year program that is the equivalent of a baccalaureate or higher degree issued by an accredited college or university in the United States. The AAO notes that the beneficiary's coursework must indicate that he or she obtained knowledge of the particular occupation in which he or she will be employed. *Matter of Ling,* 13 I&N Dec. 35 (Reg. Comm. 1968).

Both evaluations conclude, without analysis, that a diploma issued in India for a bachelor of engineering degree or a bachelor of technology degree in computer science engineering is the equivalent of a four-year degree in the United States.[1] The evaluators do not offer an opinion regarding the type of courses or the specific discipline the beneficiary studied. Without the beneficiary's complete transcripts, the record lacks evidence substantiating the authenticity of the diploma and the evaluators' conclusions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As the record does not contain information regarding the beneficiary's four years of coursework, the petitioner has not established that the beneficiary is qualified to perform the specialty occupation. In addition, the evaluators fail to discuss the beneficiary's coursework or otherwise indicate a review of the specific coursework has been completed; thus, the evaluations of the beneficiary's academic education are without a factual foundation and do not establish the beneficiary's academic credentials are the equivalent of a baccalaureate or higher degree issued by an accredited college or university in the United States.

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[1] AACRAO Electronic Database for Global Education (EDGE); a web-based resource for educational evaluations, indicates that the *Bachelor of Technology* represents the attainment of a level of education comparable to a bachelor's degree in the United States. Nevertheless, as noted in the text, without the beneficiary's complete transcripts, the record does not substantiate the authenticity of the diploma.

The AAO also finds that there is insufficient underlying information demonstrating that the beneficiary actually attended the Sri Venkateswara University. The AAO notes that the diploma and the one-year transcript have been issued to [redacted] Neither the petitioner, nor the beneficiary, nor counsel provide substantive evidence validating that the beneficiary is also known as [redacted] Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The AAO does not find the photocopy of a diploma without complete information regarding the beneficiary's underlying coursework, the examinations the beneficiary has taken, evidence of the time frame the beneficiary attended the university, and evidence of the beneficiary's identity as listed on the diploma, sufficient to establish that the beneficiary in this matter has the necessary academic credentials to perform the duties of a specialty occupation.

The AAO acknowledges that the record contains a copy of the beneficiary's resume and lists projects that the beneficiary worked on and training courses she attended. Once again, however, there is no supporting evidence confirming the beneficiary's prior employment or the training courses she attended. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The AAO finds that the petitioner has not provided evidence to establish that the beneficiary is eligible to perform the services of a specialty occupation pursuant to any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C).

Beyond the decision of the director, the petitioner has not established that the proffered position is a specialty occupation. In the May 24, 2006 letter appended to the petition, the petitioner stated that it is a major provider of services to several telecommunications companies and that it had been fortunate to find a programmer position to utilize the beneficiary's training. The petitioner further stated that the beneficiary would work at its client's site in Atlanta, Georgia. This information suggests that the petitioner is an employment contractor that will place the beneficiary at various sites for various lengths of times. Although the petitioner may act as the beneficiary's employer in that it will hire, pay, fire, or otherwise control the work of the beneficiary,[2] the petitioner must provide evidence of the actual duties the beneficiary will perform for its client, as well as an itinerary of employment. *See* 8 C.F.R. § 214.2(h)(4)(ii).

Reciting a general description of potential duties the beneficiary may perform is insufficient. The court in *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000) held that for the purpose of determining whether a proposed position is a specialty occupation, the petitioner acting as an employment contractor is merely a "token employer," while the entity for which the services are to be performed is the "more relevant employer." The *Defensor* court recognized that evidence of the client companies' job requirements is critical where the work is to be performed for entities other than the petitioner. The court held that the legacy Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proposed position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services.

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[2] *See also* Memorandum from Michael L. Aytes, Assistant Commissioner, INS Office of Adjudications, *Interpretation of the Term "Itinerary" Found in 8 C.F.R. 214.2(h)(2)(i)(B) as it Relates to the H-1B Nonimmigrant Classification*, HQ 70/6.2.8 (December 29, 1995).

The record in this matter does not contain information regarding the beneficiary's actual duties for the petitioner's client. The record does not contain a contract or other information with the petitioner's client identifying the beneficiary as the individual that will perform work at the petitioner's client's site. Thus, the AAO is unable to analyze whether the duties at the petitioner's client's work site would require at least a baccalaureate degree or the equivalent in a specific specialty, as required for classification as a specialty occupation. Accordingly, the petitioner has not established that the proposed position qualifies for classification as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) or that the beneficiary would be coming temporarily to the United States to perform the duties of a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(1)(B)*(1)*.

Additionally, pursuant to the language at 8 C.F.R. § 214.2(h)(2)(i)(B), employers who place individuals in multiple locations must submit an itinerary with the dates and locations of employment in such situations. While the Aytes memorandum cited at footnote 1 broadly interprets the term "itinerary," it provides CIS the discretion to require that the petitioner submit the dates and locations of the proposed employment. Although the director did not exercise his discretion to require an itinerary of employment, the AAO observes that the record on appeal does not establish that the petitioner had three years of work for the beneficiary to perform when the petition was filed.[3]

For these additional reasons, the petition will be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. Accordingly, the petition will be denied.

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

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[3] As noted by Assistant Commissioner Aytes in the cited 1995 memorandum, "[t]he purpose of this particular regulation is to [e]nsure that alien beneficiaries accorded H status have an actual job offer and are not coming to the United States for speculative employment."