

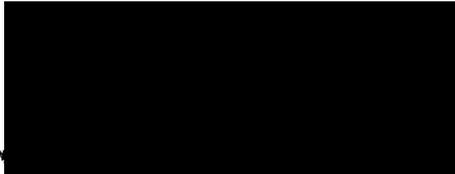
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U.S. Citizenship  
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Services

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FILE: EAC 03 031 50843 Office: VERMONT SERVICE CENTER Date: **MAR 09 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.

Handwritten signature of Robert P. Wiemann in black ink.

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 software consulting and product company and seeks to employ the beneficiary as a systems engineer. 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 director misconstrued the evidence and erred in denying the Form I-129 petition.

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 software engineer. The *Handbook* notes that most employers hire persons who have a least a bachelor's degree and broad knowledge of, and experience with, a variety of computer systems and technologies. Usual degree concentrations for this profession are computer science, software engineering, or computer information systems.

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)(2). In support of this assertion, the petitioner submitted an educational evaluation from World Education Services, Inc. That evaluation, however, does not establish that the beneficiary is qualified to perform the duties of a specialty occupation. First, the evaluation is unsigned with no indication of who prepared the report of the credentials evaluator. For that reason, the evaluation is of little evidentiary value. Furthermore, the evaluation does not establish that the beneficiary possesses the equivalent of a bachelor's degree in an educational discipline closely related to the proffered position. The evaluation states that the beneficiary possesses the equivalent of an associate degree in electronics and communications engineering technology from a regionally accredited institution in the United States. It further indicates that the beneficiary possesses the equivalent of two and one-half years of undergraduate study in computer science from a regionally accredited institution, plus two years of post-secondary study and

training at a computer training institute. The evaluation does not state that the beneficiary's prior education is equivalent to a bachelor's degree in computer science, software engineering, computer information systems, or some closely related discipline required by the proffered position. As such, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

Citizenship and Immigration Services (CIS), may itself determine whether the beneficiary is qualified to perform the duties of the specialty occupation. That determination may be made pursuant to 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5), which provides:

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. . . . 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;
- (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.

The documentation recounting the beneficiary's work experience is insufficient in detail to determine that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation, and the petitioner offered no evidence in this regard. Further, while the record does contain a letter from the Athens Corp. detailing the beneficiary's work experience with that company from June 15, 1998 until October 10, 2002, the letter is insufficient to establish that the beneficiary has recognition of expertise in the specialty. Recognition of expertise may be established by opinions from at least two recognized authorities in the same specialty occupation. A recognized authority is defined by regulation as 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. Such opinions must state:

the writer's qualifications as an expert; the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative, and by whom; how the conclusions were reached; and the basis for the conclusions supported by copies or citations of any research material used. The employer letter submitted does not qualify as an opinion issued by a "recognized authority" as defined by regulation. Furthermore, the record does not establish that the beneficiary has recognition of expertise under 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5)(ii), (iii), (iv), or (v). As such, CIS cannot determine that the beneficiary is qualified to perform the duties of the specialty occupation.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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