

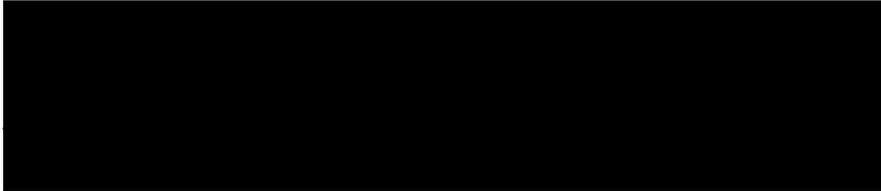
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: SRC 04 020 51247 Office: TEXAS SERVICE CENTER Date: MAY 17 2004

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:



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 director of the service center 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 provides computer software independent/private education and training. It seeks to employ the beneficiary as a technical instructor. The petitioner, therefore, 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 proffered position. On appeal, counsel states that the beneficiary is qualified for 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 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.

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. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a technical instructor. The petitioner's document entitled "Job Description," indicates that a candidate must possess a baccalaureate degree in computer science or education.

The director found the submitted evidence and educational evaluation unpersuasive in establishing that the beneficiary's training and experience are equivalent to a bachelor's degree in information systems.

On appeal, counsel references the educational evaluation to demonstrate that the beneficiary is qualified for the proffered position, and states that a bachelor's degree is common to the industry in parallel positions among similar organizations.

Upon review of the record, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position.

The record reflects the following documents: a June 27, 2003 credentials evaluation from International Education Consulting (IEC); letters from LM Consultoria Juridica, Enfoque, and [REDACTED] an employment card issued by the Department of Labor (DOL) in Brazil and a translation of the employment card; a transcript about Microsoft certification; examinations results for Oracle courses; a certificate of high school completion and a translation of the certificate; and the beneficiary's resume.

The beneficiary does not hold a baccalaureate degree from a U.S. college or university, or a foreign degree. The evaluator's conclusion, that the beneficiary holds the educational equivalent to a bachelor's degree in information systems, is based on the beneficiary's training and experience. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) states that a credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The petitioner must therefore demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). 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; or

- (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.

We have already discussed in this decision why the evaluation from IEC will not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). No evidence in the record establishes the regulation at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1), (2), and (4).

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 occupation¹;
- (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.

¹ *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 beneficiary's certificates are relevant to a bachelor's degree in information systems. Nonetheless, the certificates are insufficient to establish that the beneficiary's training equates to a U.S. baccalaureate degree in information systems.

The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty, which in this case is computer science or a related discipline. The employment card issued by the DOL in Brazil indicates the beneficiary's various job titles, employers, and dates of employment, though it provides no information about the beneficiary's duties. Because the duties are not described, the employment card is inadequate to establish that the beneficiary's work experience included the theoretical and practical application of specialized knowledge required by the specialty. The submitted letters from LM Consultoria Juridica [REDACTED] establish that the beneficiary's nine years of work experience with these companies included the theoretical and practical application of specialized knowledge required by the specialty. Nevertheless, the employers do not indicate whether the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. Accordingly, this evidence is insufficient to establish the alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

The AAO notes that there is insufficient evidence that the beneficiary has recognition of expertise. The resume of [REDACTED] does not reflect that he is a recognized authority in the field of computer science or a related discipline.

As related in the discussion above, 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.