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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

File: LIN-00-234-51719 Office: Nebraska Service Center

Date: DEC 08 2002

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)

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an employment agency with eight employees and an unspecified gross annual income. It seeks to employ the beneficiary as a programmer for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The director concluded that the petitioner had failed to submit sufficient evidence to establish that the proffered position qualifies as a specialty occupation. The director further concluded that the petitioner had failed to establish that the beneficiary's education, specialized training and work experience are the equivalent of a bachelor of science degree in computer programming. On appeal, counsel argues that the proffered position qualifies as a specialty occupation based on the specialized and complex nature of the duties of the position. Counsel further argues that the beneficiary's combined education, specialized training, and progressively responsible work experience are equivalent to a U.S bachelor's degree in computer science.

The duties of the proffered position and the percentage of time spent on each are described as follows:

[The beneficiary] will be primarily responsible for the design and implementation of data entry forms, which allows users to perform data manipulation, and will be responsible for the implementation of active server scripts which query the database, by developing the server side using VB Script and the client side using

Java Script. He will also be designing Intranet sites utilizing Visual InterDev environment, creating links to the MS Excel spreadsheet for final calculations in addition to developing detailed software design documents by following software engineering methodologies. Other duties will include performing system testing, analyzing the applications, systems and business processes as well as providing system support.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In this case, although the title of the position is "programmer," the proffered position appears to be that of a programmer-analyst. A review of the Department of Labor's Occupational Outlook Handbook, 2000-2001 edition, at pages 111-112 finds that the usual requirement for employment as a programmer-analyst is a baccalaureate degree in computer science, information science, or management information systems. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have

completed the degree required for the occupation, or have 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, 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 shows that the beneficiary possesses a degree in architecture awarded by the Tbilisi State Academy of Fine Arts in Tbilisi, Georgia, and is qualified as an architect/artist. The record further shows the beneficiary has received training in Windows 95, Norton Commander, MS Word for Windows, and MS Excel for Windows. The beneficiary has also completed courses in HTML, ASP, Jscript, VBScript, Visual Basic, advanced Visual Basic programming, OOP and VB, MS SQL, and advanced database programming with VB and ASP. As of the date of filing of the petition, the beneficiary had approximately 3 3/4 years of work experience in the computer science field.

The beneficiary does not hold a United States baccalaureate or higher degree or a foreign degree which is equivalent to a United States baccalaureate or higher degree in computer science, information science, or management information systems from an accredited college or university. Nor does the beneficiary 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.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D), 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.

There is no indication in the record that the beneficiary has completed recognized college-level equivalency examinations or special credit programs, such as CLEP or PONSI. Additionally, the petitioner has not submitted 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 occupation.

The petitioner submitted an evaluation report from Bradley L. Spencer, an evaluator associated with the Foundation for International Services, Inc. Mr. Spencer found the beneficiary's degree in architecture from the Tbilisi State Academy of Fine Arts, a six-year program, to be equivalent to a combined bachelor's degree and master's degree in architecture from an accredited college or university in the United States. Mr. Spencer states that he based this finding on the beneficiary's diploma and transcripts from that institution. Mr. Spencer's evaluation of the beneficiary's academic training at the Tbilisi State Academy of Fine Arts is accepted.

Mr. Bradley further found the beneficiary's university degree in architecture and his computer training, in combination with his work experience, to be equivalent to a bachelor's degree in computer science from an accredited college or university in the United States. Mr. Spencer based this finding on the beneficiary's resume and copies of two certificates showing completion of training in computer applications.

While counsel argues that Mr. Spencer's evaluation should be accepted by the Service without question, this Service uses an independent evaluation of a person's foreign credentials in terms of education in the United States as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be rejected or given less weight. See Matter of SEA, Inc., 19 I&N Dec. 817 (Comm. 1988). In this case, the person who performed the evaluation, Bradley Spencer, is not a college or university 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.

Furthermore, Mr. Spencer based his evaluation of the beneficiary's work experience solely on the beneficiary's resume, rather than on original documentation from the beneficiary's employers to corroborate the statements made by the beneficiary in his resume. Accordingly, Mr. Spencer's finding that the beneficiary has the equivalent of a bachelor's degree in computer science is accorded little weight.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(5), the Service may determine that equivalence to completion of a baccalaureate degree in a 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 for expertise in the specialty occupation as a result of such training and experience. . . . 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, 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.

(Emphasis added.) The beneficiary's transcript from the Tbilisi State Academy of Fine Arts shows the applicant completed 177 hours of classwork in computing skills. On appeal, counsel submits an additional transcript from that institution which shows the specific computer classes completed by the applicant and the number of hours as follows:

- (1) Introduction to programming languages (Dos, C, Basic) - 24 hours;
- (2) Introduction to architectural computer applications (Auto CAD 9) - 24 hours;
- (3) Intermediate course in programming languages (C, Basic) - 40 hours;
- (4) Computation methods in structural mechanics - 32 hours; and
- (5) Advanced course in programming languages - 57 hours.

Counsel also submits a transcript from the beneficiary's 8-month training course at the Technical University of Georgia, Department of Computer Science. According to this transcript, the beneficiary completed 216 hours of computer training in the following computer areas:

- (1) Web design, including HTML, ASP, JScript, VBScript;
- (2) Visual Basic 5.0, including introduction to VB, Advanced VB Programming, and OOP and VB;
- (3) MS SQL Server 6.5, including introduction to MS SQL 6.5; SQL and VB; and Advanced Database Programming with VB and ASP.

Counsel also submits a transcript from the Dial Computer Training Studio showing the beneficiary completed 36 hours of introductory courses in MS Dos, Windows 95, MS Word 97 for Windows, and MS Excel 97 for Windows.

For purposes of determining equivalency to a baccalaureate degree, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. In this case, it is concluded the beneficiary has completed the equivalent of approximately one year of college-level training in computer applications.

Therefore, the petitioner must demonstrate that the beneficiary has at least three years of work experience requiring 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. (Emphasis added.)

Counsel submits on appeal letters from the beneficiary's former employers. David Kajain, Head of the Computer Center of the Department of Amelioration & Water Economy, states that the beneficiary was employed by that institution as a full-time programmer from September of 1996 to April of 1998 and provides a list of the beneficiary's duties. George Batsanadze, Director of Georgian Software Systems, Ltd., states in his letter that the beneficiary has been employed by his company as a programmer since April of 1998 and provides a list of the beneficiary's duties. It appears that the work performed by the beneficiary for both employers was essentially that of a programmer/analyst.

In view of the foregoing, it is concluded that, as of the filing date of the petition, the beneficiary had approximately three years and eleven months of work experience as a computer programmer/analyst. However, neither of the writers has provided any information which would make it possible to determine whether the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

Counsel submits on appeal an advisory opinion letter from Harvey Daniels, President of the Technical Recruiters Network. Mr. Daniels states that the beneficiary's education, training and work experience qualify him to perform services in the specialty occupation. The Service acknowledges Mr. Daniels as a recognized authority in the field of computer science. However, as stated above, documents must be submitted from at least two recognized authorities in the same specialty occupation in order to clearly establish the beneficiary has expertise in the field of computer science. While counsel states on appeal that another advisory opinion letter was being submitted from James Pappas, Manager of Executive Search at Motorola Corporation, no such letter is contained in the record.

No published material by or about the alien in professional publications, trade journals, or major newspapers has been submitted. Nor has any evidence been submitted to show that the beneficiary holds licensure or registration to practice the specialty occupation in a foreign country or that the beneficiary has membership in a recognized foreign or United States association or society in the specialty occupation. Furthermore, neither counsel nor the petitioner has submitted any documentation from a recognized authority stating that the beneficiary has made significant contributions to the field of computer programming.

In view of the foregoing, it is concluded that the petitioner has not submitted sufficient documentation to clearly establish that beneficiary's educational, training, and employment background are equivalent to a bachelor's degree in computer science, information science, or management information systems.

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 decision of the director will not be disturbed.

ORDER: The appeal is dismissed.