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U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: LIN-00-016-53402 Office: Nebraska Service Center Date: DEC 21 2001

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)

Public Copy

IN BEHALF OF PETITIONER:

[redacted]

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 a computer consulting business with over 3,000 employees and a stated gross annual income in excess of $300 million. It seeks to employ the beneficiary as an analyst/programmer for a period of three years. The director determined the petitioner had not established that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, the petitioner submits a brief and supporting documents.

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), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

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.

The director denied the petition because the beneficiary's transcripts revealed that he had not taken any computer science related courses in pursuit of the four foreign academic degrees he possessed. The director further found that despite the three professional evaluations of the beneficiary's education and work experience contained in the record, the petitioner had failed to establish that the beneficiary's education, training, and experience is equivalent to a baccalaureate or higher degree in the specialty occupation. On appeal, counsel asserts that the proffered position is that of systems analyst in which the beneficiary works with a highly sophisticated package software system specifically designed for corporate human resources applications. Counsel states that three professional evaluators found the beneficiary's education and experience to be the equivalent of a bachelor's degree required by the specialty occupation. Counsel contends that the three evaluators have

determined that the proffered position is a specialty occupation and that the beneficiary is qualified to perform such position.

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 beneficiary holds a bachelor of arts and a masters degree in Semitic languages, as well as a bachelor of theology and doctor of theology, all conferred by South African institutions. It is noted that the beneficiary's academic transcripts do not provide any indication that he took any courses directly related to computers or software in receiving any of these degrees. The record contains three employment letters providing descriptions of the beneficiary's duties during his term of employment with each respective company over a four year period beginning in February 1996. These letters indicate that the beneficiary provided consulting, support, and training services to the human resource components of these companies relating to the installation and maintenance of a specific software program.

The three academic evaluations contained in the record are based upon the beneficiary's educational background plus work experience. The evaluation from the Washington Evaluation Service, which was submitted with the original Form I-129 petition, states that the beneficiary possessed the equivalent of "...a Bachelor of Science with a dual major in Semitic Languages and Computer Science as awarded by an accredited U.S. university." In response to a Service request for additional evidence to establish that the

beneficiary qualifies to perform services in a specialty occupation, counsel submitted two additional evaluations. Both of these evaluators, one the employee of an evaluation service and the other a professor at a U.S. university, concluded that the beneficiary possessed the equivalent of "a Bachelor's degree in Management Information Systems with a specialty in Human Resources, or alternatively a Bachelor's degree in Human Resources with a specialty in software consulting."

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).

Here, the evaluation of the beneficiary's foreign credentials is based upon the beneficiary's educational background combined with approximately four years of work and training. While counsel, the petitioner, the beneficiary, and the evaluators all make reference to computer training and certification received by the beneficiary, the record contains no evidence that he has ever received formal training of any type remotely related to the use and application of computers. It is noted that the record does not contain any corroborating evidence to support the evaluators' claims that the beneficiary possesses the equivalent of a bachelor's degree in any area related to computers, computer information systems, or human resources, such as 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. Furthermore, the record contains insufficient evidence that the beneficiary's work experience was experience in a specialty occupation or that it is sufficient to overcome the beneficiary's lack of a degree in a specialized and related field of study. In addition, the evaluators have not established a correlation between various aspects of the beneficiary's employment experience and courses necessary for a degree in computer science, computer information systems, or human resources. Accordingly, the evaluations are accorded little weight. In view of the foregoing, the petitioner has not sufficiently established that the beneficiary possesses the equivalent of a degree in a specialty occupation or related area.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specialized area. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes him to practice a specialty occupation. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the

beneficiary is qualified to perform services in a 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 not sustained that burden. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.