



02

U.S. Department of Justice

Immigration and Naturalization Service

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

[REDACTED]

File: EAC-00-024-51654

Office: Vermont Service Center

Date: JUL 3 2001

IN RE: Petitioner:

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)

Public Copy

IN BEHALF OF PETITIONER:

[REDACTED]

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**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, Acting 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 11 employees and a gross annual income of \$1.25 million. It seeks to employ the beneficiary as a programmer analyst 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, counsel submits a brief.

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.

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 director denied the petition because the petitioner had not established that the beneficiary's bachelor's degree in leather technology and subsequent work experience are the equivalent of a bachelor's degree in computer science. The director further found that the record did not clearly demonstrate that the beneficiary's work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation, that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who had a degree or its equivalent in the specialty, or that the beneficiary had recognition of expertise in the specialty. On appeal, counsel states in part that he is submitting a new credentials evaluation from a highly experienced professor and evaluator of foreign credentials. Counsel also states that the beneficiary had additional coursework and training in computers from two universities in the U.S. and an institution in India.

The beneficiary's academic background and professional experience has been found by an academic expert to be equivalent to a bachelor of science degree in computer science. The academic expert bases his finding on the beneficiary's bachelor of technology with a concentration in leather technology conferred by an Indian institution combined with the beneficiary's approximate six years and one month employment experience and training in computer science and related areas. Accordingly, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in a specialty occupation based upon education alone.

The academic expert states in part that:

Most recently, from August, 1994 through at least March, 1996, [the beneficiary] completed progressively employment experience [sic] in the field of computer science for companies including Bharat Software Systems, in Madras, India, and Ciba-Geigy Limited, in Hong Kong.

Although the academic expert provides a description of the beneficiary's duties while employed in Bharat Software Systems and Ciba-Geigy Limited, the record contains no corroborating evidence

of such duties in support of his claim. The letter from Bharat Software Solutions dated April 20, 1997, states the beneficiary's position as programmer analyst but does not describe any of the beneficiary's duties during his employment there. It is also noted that the dates of the beneficiary's employment provided in the letter do not correspond with those provided by the industry expert in his evaluation. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. Matter of Ho, 19 I&N Dec. 582. (Comm. 1988).

It is further noted that the record does not contain any type of letter or verification of the beneficiary's employment with Ciba-Geigy Limited.

The academic expert further states in part that:

Prior thereto, from January, 1990 through June, 1994, [the beneficiary] was employed at a bachelor's level of competency and responsibility as a software engineer with Meher Industries Limited, in India. In this position, he assisted in the full-cycle development of a hospital database system (on behalf of the Govardhan Clinic) a fund management tool (featuring buy and sell activity modules), and a payroll processing system (for use internally).

Again, although the letter from Meher Computer Consultings states the beneficiary's position as software development engineer, it does not describe any of the beneficiary's duties during his employment there.

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 on education and experience. The evaluator has not demonstrated specifically how the evaluation was made nor the basis for making it (including copies of the relevant portions of any research materials used). Neither the evaluator nor the petitioner have persuasively shown that the beneficiary's employment 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. Accordingly, the evaluation is accorded little weight.

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 her 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 beneficiary's additional computer coursework and training at two U.S. universities and an institution in India are noted. Such coursework and training, however, were not discussed by the industry expert in his evaluation. As such, neither the evaluator nor the petitioner have shown that such coursework and training are sufficient to overcome the beneficiary's lack of a degree in a specialized and related field of study.

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.