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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



Public Copy

File: EAC-00-067-51435 Office: Vermont Service Center Date: JUL 11 2001

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)

IN BEHALF OF PETITIONER:



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 software management consultancy business with 50 employees and a gross annual income of \$4.8 million. It seeks to employ the beneficiary as a systems analyst for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

The director denied the petition because it did not appear that a bachelor's degree, its equivalent, or higher, in a specific specialty was the minimum requirement for the proffered position. On appeal, counsel states in part that the petitioner requires a bachelor's degree in engineering, mathematics, computer science or equivalent plus one and one half years experience.

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.

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.

A review of the Department of Labor's Occupational Outlook Handbook, 2000-2000 edition, finds that for a systems analyst position, many employers seek applicants who have a bachelor's degree in computer science, information science, or management information systems (MIS). The beneficiary holds a baccalaureate degree in engineering with a specialization in production engineering conferred by an Indian institution. The beneficiary's foreign education has been found by an academic expert to be equivalent to a baccalaureate degree in production engineering from an accredited university in the U.S. The petitioner has not sufficiently established that this education is relevant to the duties of the proffered position. Although the beneficiary's transcripts include a few computer courses, the academic expert's foreign education evaluation does not indicate that the beneficiary's degree is the equivalent of a bachelor's degree in computer science, information science, or MIS. The petitioner must establish that the beneficiary holds a minimum of a baccalaureate degree in a specialized area or its equivalent in a related field of study.

The beneficiary has a post graduate diploma in computer science from an institution in India. The petitioner has not demonstrated that beneficiary's computer training is equivalent to an academic major field of study at a United States institution.

The record indicates that the beneficiary had over five years of relevant employment experience at the time the visa petition was filed. Although counsel provides a detailed description of the beneficiary's job duties and argues that such experience is qualifying work experience as a systems analyst, the record does not contain any corroborating evidence to support such claim 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.

With respect to counsel's objection to denial of this petition in view of the approval of similar petitions in the past, this Service is not required to approve applications or petitions where eligibility has not been demonstrated. The record of proceeding, as presently constituted, does not contain copies of the previously approved petitions and their supporting documentation. Specifically, copies of the beneficiaries' degrees and transcripts were not submitted. It is, therefore, not possible to determine

definitively whether the petitions were approved in error or whether the facts and conditions have changed since their approval.

In view of the foregoing, the petitioner has not established that the proffered position is a specialty occupation, as the record does not sufficiently demonstrate that a bachelor's degree, its equivalent, or higher, in a specific specialty is the minimum requirement for the proffered position.

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.