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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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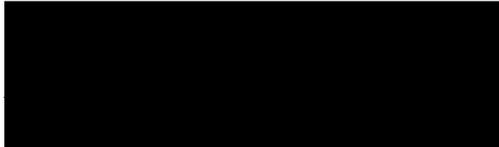
File: EAC 99 265 50599 Office: Vermont Service Center Date:

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:



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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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is engaged in software design and development and provides computer consulting services. 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 states that it is respectfully suggested that the director does not possess the expertise to "go beyond" a professional evaluation of the beneficiary's educational and experience background from a reputable evaluation firm.

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.

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).

The petitioner provides an evaluation of the beneficiary's foreign educational credentials dated December 16, 1999. The evaluator found that the beneficiary had attained the equivalent of three years of undergraduate study in Business Administration and related courses at a regionally accredited institution of higher education in the United States. The results of this evaluation are accepted as being accurate. The petitioner provides a second evaluation dated December 25, 1999 from the same firm which finds that through his education and work experience, the beneficiary has attained the equivalent of a bachelor's degree with a major in Computer Information Systems.

The record shows that the beneficiary was awarded a "Degree of Bachelor of Commerce" from the University of Madras in India in 1996. However, a review of the transcript submitted indicates that the beneficiary completed no computer courses at the University. The beneficiary also studied at a firm named Info Agrade Computers in India from September 1994 to December 1994 and was awarded a "Diploma in Computer Applications."

In this case, the beneficiary is not qualified to work in a specialty occupation as a programmer analyst on the basis of education alone.

For the purpose of determining equivalency to a baccalaureate degree in a field related to the job offered in this case, three years of specialized training and/or work experience must be demonstrated for each year of college-level training that the alien lacks. Here, the beneficiary needs at least 11 1/2 years of experience in the specialty occupation to qualify.

The petitioner claims that the beneficiary had been employed by three firms in qualifying positions in India beginning in June 1996. Accepting the petitioner's assertion, the beneficiary had attained less than 11 1/2 years of qualifying experience in the field of computer science at the time the visa petition was filed in September 1999. Therefore, the visa petition may not be approved for this reason. See: 8 C.F.R. 214.2(h)(4)(iii)(D)(5). Based upon the above analysis, it is determined that the petitioner's second evaluation dated December 25, 1999 shall be rejected as being questionable.

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.

The duties of the offered position are described as follows:

Our company, at present, is in need of the temporary services of a Programmer Analyst, whose job duties would include the utilization of specialized database in

Mainframe, Windows platform; and to design, analyze and install programs.

The foregoing description is insufficient to establish that the offered position is a specialty occupation. The duties and the skills needed to accomplish the job are described in a general way with no clear indication as to the actual level of complexity of the position.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. The petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the offered position. In addition, the petitioner has not shown that similar firms require the services of such individuals in parallel positions.

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.