



U.S. Department of Justice

Immigration and Naturalization Service

DL

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

[REDACTED]

JUN 7 2001

File: EAC 98 157 50632 Office: Vermont Service Center Date:

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)

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

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: Approval of the nonimmigrant visa petition was revoked by the director after appropriate notice. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a data processing and consulting firm which seeks to employ the beneficiary as a programmer/analyst for a period of two years. The director revoked approval of the visa petition upon receipt of derogatory information from the United States Embassy, Islamabad, Pakistan. The consular officer determined that the petitioner had not established that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel argues that the proffered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation.

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)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay, and

3. Evidence that the alien qualifies to perform services in the specialty occupation.

The petitioner has provided a certified labor condition application and a statement that it will comply with the terms of the labor condition application.

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 proffered position appears to be a specialty occupation. The beneficiary does not hold a baccalaureate degree in computer science or a related field of study. The beneficiary does hold a baccalaureate degree and a master's degree conferred by Columbia University. The petitioner asserts that the beneficiary worked for Citibank in Pakistan.

A review of the beneficiary's transcripts of record reflect only two courses directly related to computer science. In addition, an interview at the Embassy revealed some discrepancies. The report of the consular officer is quoted in pertinent part:

The interview revealed that [the beneficiary] knew only one programming language, Pascal, a language which is seldom used in the United States and which is not mentioned in the petition. The petition states that [the beneficiary] "has worked for Citibank in Pakistan generating and implementing computer models to evaluate

and monitor work efficiency in the bank and within its functional areas." [The beneficiary] told our Information Management Officer (IMO) that he worked on Lotus to construct a table; he was not programming Citibank computers. The IMO asked [the beneficiary] about the system and platform used by Citibank ... and [the beneficiary] had no knowledge of either].

In view of the foregoing, it is concluded that the beneficiary's employment experience can be given little weight.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a computer-related field of study. The beneficiary does not hold 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 qualifies 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.