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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



File: LIN-00-015-50930

Office: Nebraska Service Center

Date:

MAY 21 2001

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)

Public Copy

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 development and consulting business with approximately 18 employees and a gross annual income of \$0.75 million. It seeks to employ the beneficiary as a management analyst-financial/business for a period of three years. The director determined the petitioner had not established that the beneficiary qualifies to perform the services of a specialty occupation.

On appeal, counsel submits a brief.

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 beneficiary's educational background does not relate to the duties of the proffered position which are all computer related. On appeal, counsel submits the following documents to demonstrate that the beneficiary possesses the required software development expertise:

- a) Certificate from Concept Computer Network, stating that [the beneficiary] attended the course on Computer Programming in Basic Language for a period of seven weeks from 9/14/85 to 11/2/85;
- b) A Certificate from the Aquarius Institute of Computer Sciences, stating that [the beneficiary] completed SAP R/3, ABAP/4 and FI/CO Modules on May 23, 1999;
- c) A Certificate from the Aquarius Institute of Computer Sciences, stating that [the beneficiary] completed a course in Computer Infotech in September 1999;
- d) A comprehensive brochure about the SAP R/3, ABAP/4 and Computer Infotech courses offered by the Aquarius Institute. These courses are focused on software development for Financial Management and Accounting, which is within the scope of the job duties that will be performed in the specialty occupation position offered;
- e) A letter from Dr. Larry W. Cornwell of Bradley University, stating that [the beneficiary] did indeed take specific courses in MS Excel and MS Access;
- f) A detailed syllabus from Bradley University showing the various topics that the above mentioned courses cover.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Generally, [the beneficiary] will be responsible for managing RDBMS projects using MS Access and Oracle Financial Products of Oracle Applications. [The beneficiary] will conduct computerized accounting. [The beneficiary] will develop financial MIS, financial analysis and systems integration using MS Access and Oracle. [The beneficiary] will conduct computerization of financial systems. [The beneficiary] will conduct the development and implementation of business in the field of ERP. [The beneficiary] will also develop ERP (Enterprise Resource Planning) solutions for clients using customized software applications such as SAP and ABAP/4 (Finance & Controlling Module) to conduct organization mapping, customization and General Ledger

implementation. [The beneficiary] will also analyze and design software for financial and business applications and create new programs or modify existing ones according to specific needs. [The beneficiary] will evaluate factors in each situation and develop new programs to promote and ensure operational efficiency and facilitate long-term usage.

In these proceedings, the duties of the position are dispositive and not the job title. The proffered position appears to be that of a computer systems analyst. The Department of Labor's Occupational Outlook Handbook, 2000-2001 edition, at pages 111-112 finds that the usual requirement for employment as a computer scientist, systems analyst, or engineer is a baccalaureate degree in computer science, information science, or management information systems.

The beneficiary hold a master's degree in business administration from a U.S. university. The beneficiary also holds a bachelor's degree in finance and a master's degree in finance from a university in Bangladesh. The record, however, does not contain an evaluation of the beneficiary's foreign credentials from a service which specializes in evaluating foreign educational credentials as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(3). Counsel argues that the beneficiary has taken various computer courses and is well trained in areas related to the petitioner's business. Nevertheless, the petitioner must establish that the beneficiary holds a minimum of a baccalaureate degree in computer science, information science, or management information systems or its equivalent. 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 beneficiary took several courses in computer applications. 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 beneficiary had over three years' employment experience at the time the visa petition was filed. The petitioner has not shown that the 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.

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.

Beyond the decision of the director, the petitioner's labor condition application was certified subsequent to the filing date of the visa petition. Regulations at 8 C.F.R. 214.2(h)(4)(i)(B)(1) provide that before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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.