



U.S. Department of Justice

Immigration and Naturalization Service

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



File: SRC-99-047-53468 Office: Texas Service Center

Date: 20 NOV 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:



**Public Copy**

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:** The nonimmigrant visa petition was denied by the Director, Texas Service Center. The director certified his decision to the Associate Commissioner for Examinations for review. The decision of the director will be affirmed.

The petitioner is a computer consulting business with two employees and an unspecified gross annual income. It seeks to employ the beneficiary as a computer programmer for a period of two years and nine months. The director concluded that the petitioner had not established that the beneficiary holds a baccalaureate or equivalent foreign degree in the specialty occupation or that the beneficiary's education, training, and experience are equivalent to a baccalaureate or higher degree in the specialty occupation.

Counsel was allowed until June 7, 1999, to submit a brief or other written statement. To date, no additional evidence has been received by this office. Therefore, the record must be considered complete.

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 beneficiary holds a Bachelor of Commerce degree conferred by an Indian university and a certification in Oracle Developer/2000 from ITS Education Centre in India. While the beneficiary also claims to have a diploma in electronic data processing and computer management from the Rajendra Prasad Institute of Communication and Management, no such diploma is contained in the record. Rather, the record contains a Mark Sheet/Provisional Certificate from that institution reflecting that the beneficiary took the annual diploma examination in December 1988 and January 1989. The mark sheet shows that the applicant achieved a score of 378 out of a possible 1000 and failed the examination.

An educational evaluation service found the beneficiary's education equivalent to three years of undergraduate study in business administration and the beneficiary's computer training equivalent to one year of post-secondary study in computers at a vocational institution. The record contains no evidence that the beneficiary's academic credentials are equivalent to a baccalaureate degree in computer science, information science, or management information systems.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(1), equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by 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.

The beneficiary also claims to have over ten years of work experience in the field of computer programming. The petitioner

submitted a Work Experience Evaluation Report prepared by Dr. Dinesh Batra, Associate Professor in the Department of Decision Sciences and Information Systems at Florida International University and a consultant to the Global Evaluation Group, an educational evaluation service. Dr. Batra determined that as a result of the beneficiary's academic, employment, and training backgrounds, the beneficiary has attained the equivalent of a Bachelor of Science degree in Computer Information Systems from an accredited institution in the U.S. Dr. Batra specifically stated in his cover letter:

I review transcripts and other academic documentation of applicants to Florida International University (an accredited university) and have authority to grant college-level credit for training and/or experience in the field of management/computer information systems whenever the counseling department can not resolve a transfer case (in the field of management/computer information systems) and needs an in depth evaluation.

The Service subsequently acquired evidence which contradicted the assertions made by Dr. Batra. Specifically, Dr. Dana Farrow, Associate Dean and Professor in the College of Business Administration at Florida International University, informed the Service in a letter dated November 3, 1998, that "[n]either the Department of Decision Sciences and Information Systems... nor the College of Business Administration grants actual credit hour academic credit on the basis of prior work experience."

On March 24, 1999, the director advised the petitioner in writing of his intention to deny the petition based on information provided by Dr. Farrow.

In response to the notice, counsel submitted a letter from Dr. Joyce Elam, Dean of the College of Business Administration at Florida International University. Dr. Elam explained the circumstances under which Dr. Batra has the authority to grant college level credit:

Dr. Batra is Co-ordinator of the Co-op and Internship program in MIS. In the case of Co-op, students take a full-time, paid position in a company. In the case of Internship, the students take a part-time position in a company. In either case, students submit a report of their training, which is evaluated by Dr. Batra and a grade is assigned for a 3-credit course.

Dr. Batra can waive an MIS course and substitute it for an independent study if the coursework or training/work experience of the student indicates that the course would be of little value.

Dr. Batra can waive the computer skill course CGS 2060 for a student, if asked by the counseling department and if the student training/work experience is adequate. Normally, this determination is made by the counseling department.

Dr. Batra also interviews candidates for selecting them as instructors for a given MIS course. The evaluation is based on academic credentials and training/work experience.

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). In view of the statements of Associate Dean Farrow and Dean Elam, the evidence of record does not show that the evaluator is an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited university which has a program for granting such credit based on an individual's training and/or work experience. Accordingly, the evaluation is accorded little weight.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(5), the Service may determine that equivalence to completion of a baccalaureate degree in a specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition for expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks... It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, or major newspapers;

- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The petitioner submitted an employment letter from AVN Consultants stating that the beneficiary worked for that company as a Senior Programmer from April 1, 1998 to March 31, 1991 and an employment letter from Santram Consultants stating the applicant has worked for that company as an EDP Manager since June 1, 1991. However, neither of the beneficiary's former employers provided detailed descriptions of the work performed by the applicant during his employment for those companies. Therefore, it is not possible from examination of the record to determine whether the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation or that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

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 him to practice a specialty occupation in a foreign country. The record does not contain any published material by or about the alien in professional publications, trade journals, or major newspapers. No evidence has been submitted to document any achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary has the equivalent of a baccalaureate degree 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 director's order of May 7, 1999 denying this petition is affirmed.