



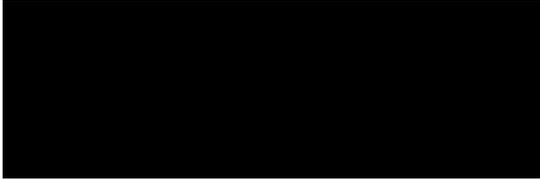
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U.S. Department of Justice

Immigration and Naturalization Service

IDENTIFICATION OF CASE
PROPERTY OF INS
DIVISION OF PERSONAL SERVICE

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



File: EAC-01-096-53497

Office: Vermont Service Center

Date: 3 APR 2002

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: SELF-REPRESENTED

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, 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 computer consulting business with 19 employees and a projected gross annual income of \$1.2 million. 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, the petitioner submits a brief.

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.

The director denied the petition because the petitioner had not established that the beneficiary's bachelor's degree in electronics engineering was equivalent to a bachelor's degree in computer science. The director further found that despite the conclusion of the credentials evaluator that the beneficiary possessed the equivalent of a bachelor's degree in computer science, the record contained no evidence verifying and detailing the beneficiary's work experience. On appeal, the petitioner's president states, in part, that evidence of the beneficiary's work experience is now available from [REDACTED] and is submitted to demonstrate that the beneficiary qualifies for the proffered position. The petitioner also submits a new credentials evaluation in support of this claim.

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 baccalaureate degree in electronics engineering conferred by an Indian institution. An evaluator from a credentials evaluation service and an academic expert both find the beneficiary's educational background equivalent to a baccalaureate degree in electronics engineering conferred by a U.S. institution. The Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, 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. Accordingly, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in the specialty occupation based upon education alone.

The record indicates that the beneficiary also had almost six years of relevant employment experience at the filing of the petition. Both evaluators found the beneficiary's educational background and employment experience equivalent to a baccalaureate degree in computer science conferred by a U.S. institution. The first evaluation dated June 20, 2000, however, was accorded little weight by the director because the evaluator based his findings regarding the beneficiary's employment experience entirely on the information from the beneficiary's resume. The second evaluation dated August 2001, is accompanied by employment letters verifying and detailing the beneficiary's work experience. Despite the conclusion of the second evaluator who finds the beneficiary's educational background and work experience equivalent to a baccalaureate degree in electronics and computer science, the record contains no evidence that the evaluator/academic expert 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, as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(1).

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).

Here, the first evaluation was accorded little weight by the director because part of the evaluator's conclusions regarding the beneficiary's employment were based on the information in the beneficiary's resume without any corroborating evidence. The second evaluation is also accorded little weight because it does not meet the requirements of 8 C.F.R. 214.2(h)(4)(iii)(D)(1), as described above.

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 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.

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.