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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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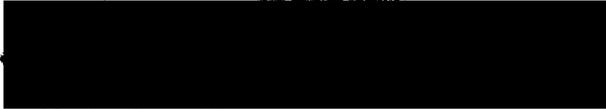
File: EAC-01-021-53839

Office: Vermont Service Center

Date: 24 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)

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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and subsequently dismissed by the Associate Commissioner for Examinations for failing to provide any additional evidence on appeal to overcome the decision of the director. Upon receipt of additional information, it appears that counsel for the petitioner did submit additional evidence timely. Therefore, the matter will be reopened on Service motion pursuant to 8 C.F.R. 103.5(a)(5)(i). The appeal will be dismissed.

The petitioner is a software development and consulting business with 6000 worldwide employees, 1000 U.S. employees, and a worldwide gross annual income of \$156 million. It seeks to employ the beneficiary as a software engineer for a period of three years. The director determined the petitioner had not established that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel 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 demonstrated that the beneficiary's degree in printing technology, his training, and his work experience qualified him to perform the proposed duties. On appeal, counsel submits a new credentials evaluation to demonstrate that the beneficiary is qualified to perform the duties of the proffered position.

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 engineering degree in printing and graphic communication conferred by an Indian institution. In an evaluation dated October 13, 2000, an evaluator from a credentials evaluation service found the beneficiary's foreign education equivalent to a bachelor of science degree in printing technology from an accredited U.S. institution. A review of 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.

Although the record indicates that the beneficiary had computer related employment experience prior to the filing of the instant petition, the petitioner has not demonstrated that the beneficiary's employment experience was experience in a specialty occupation or that it is equivalent to a computer-related degree. The record contains a second evaluation dated July 31, 2001, from an evaluator of another credentials evaluation service who states, in part, as follows:

Documentation relating to his employment indicates that [the beneficiary] was employed 32 months as a Pre-press Engineer. Information available to any normal person indicates that the pre-press function involves electronic imaging using computers and scanners linked to various electronic output media. Subsequent employment as a

graphics engineer, programmer, and software developer amounts to 57 months, for a total of 89 months of employment in positions related to computing. These 89 months can be quantified as equivalent education by dividing this number by the number of months corresponding to one year of equivalent education under the "three-for-one" rule (12 months/year x 3 = 36) to yield a quotient of 2.5 years of equivalent education, or the equivalent of more than 70 U.S. semester credits. This amount exceeds the credit requirement in computing required for a baccalaureate degree at an accredited university in the United States.

In summary, the documentation of his postsecondary education and employment indicates that [the beneficiary] has acquired sufficient education and experience to demonstrate his qualification for a position in a computer-related specialty occupation.

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 evaluator of the July 31, 2001 evaluation appears to have included the beneficiary's employment experience that was gained after the filing date of the instant petition on October 25, 2000, in his evaluation. Employment experience obtained after the filing of the instant petition, however, is not relevant to this proceeding. 8 C.F.R. 103.2(b)(12) states that an application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed. Furthermore, although the evaluator includes the beneficiary's employment experience from [REDACTED] and from [REDACTED]

[REDACTED] in his evaluation, the record contains no corroborating evidence such as employment letters from officials verifying such employment and detailing the nature of the beneficiary's duties. Rather, it appears that the only evidence in the record of such employment is the beneficiary's resume. In view of the foregoing, the evaluation is accorded little weight.

It is further noted that the record does not contain any evidence that the beneficiary's educational and employment backgrounds are equivalent to a degree in computer science, information science, or management information systems, such as 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, as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(1).

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.