

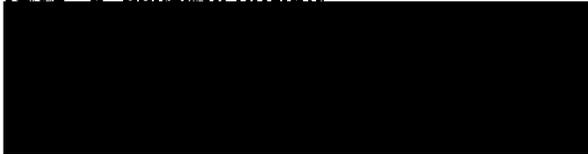


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U.S. Department of Justice

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: EAC-01-004-54363 Office: Vermont Service Center

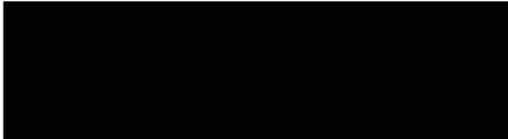
Date: AUG 04 2002

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 approved by the Director, Vermont Service Center. Based upon information obtained from the beneficiary during his visa issuance process at the American Embassy, the director determined that the beneficiary was not clearly eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of his intent to revoke approval of the visa petition and his reasons therefore, and ultimately revoked the approval of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a software development and computer consulting business with 38 employees and an approximate gross annual income of \$2.5 million. It seeks to employ the beneficiary as a computer programmer analyst 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.

In a report dated July 3, 2001, a consular officer stated, in part, as follows:

\* [The beneficiary] is not a software engineer; he has [a] Bachelors degree in Science in Chemistry and a Bachelors of Law.

\* [The beneficiary] pursued computer coursework at an uncertified computer learning franchise in 2000.

\* [The beneficiary] claims to have three years' experience in computers. However, in a specific computer skills test administered to [the beneficiary], he scored an abysmal 0/5 answers correct.

Therefore it is evidence that the applicant is incapable of performing his job responsibilities.

On appeal, counsel states, in part, that:

[The beneficiary] has considerable experience in the field of computer science, as has been mentioned in our prior letters to the Service, and as indicated by the numerous letters from reputed concerns, including a bank, that confirm his experience in the field, and that have been submitted earlier... Not only has he acquired extensive computer related experience in the past, but has also successfully passed the requirements of Microsoft to be recognized as a Microsoft Certified Professional.

Since the interview with the Consulate, [the beneficiary] has further expanded evidence of his expertise in the field by obtaining a score of 877 in a test conducted by Microsoft in Designing and Implementing Databases with Microsoft SQL server 7.0 where the passing score is merely 693, as well as by obtaining a score of 900 in a test conducted by Microsoft in Designing and Implementing Databases with Microsoft Visual Basic 6.0 where the passing score is merely 728. These certificates offer considerably more reliable indication of the expertise of [the beneficiary] than the extremely perfunctory "test" provided by the Consular Officer...

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 science degree in chemistry and a bachelor of laws (general) degree conferred by an Indian institution. The beneficiary also holds a post graduate diploma in computer application and a certificate indicating that he had passed the programming in dBase Lotus 1, 2, 3 and Wordstar course from an Indian computer center. The record also indicates that at the time of the filing of the instant petition, the beneficiary had approximately six years of computer-related employment experience.

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. One credentials evaluator reviewed the beneficiary's education and computer training from the Indian computer center and concluded that:

[The beneficiary's] degrees in Bachelor of Science and Bachelors of Laws are equivalent to a Bachelor degree in Chemistry and [another] Bachelor degree in International Law from an accredited University in the United States.

A second credentials evaluator reviewed the beneficiary's coursework, computer training (including examination results that were dated more than a year after the filing of the instant petition, indicating that the beneficiary is a "Microsoft Certified Professional") and employment experience, and concluded that they were equivalent to a BS degree in computer information systems from an accredited college or university in the United States.

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 of the beneficiary's foreign credentials is based on the beneficiary's education and computer training. The first evaluator does not conclude that the beneficiary holds a baccalaureate degree in a computer-related area. The second evaluator states, in part, that:

Later, [the beneficiary] has obtained the Microsoft Certified Professional (MCP) certification after passing the *Designing and Implementing Desktop Applications with Microsoft Visual BASIC 6.0* in the year 2000. This certification is equivalent to 3 months of coursework towards a BS degree in Computer Information Systems from an accredited college or university from the United States of America.

In addition, [the beneficiary] has 6 years of experience in the software development of commercial applications. He is most proficient in development, designing of software applications using Visual BASIC and Microsoft SQL server. His list of skills includes Crystal Reports, MS Access, Visual FoxPro, ActiveX, R&R Report Writer.

The record indicates that the second evaluator based his conclusion, in part, on the beneficiary's MCP certification which the evaluator states is equivalent to three months of coursework towards a BS degree in computer information systems from an accredited U.S. college or university. The two examination score reports, however, were dated November 26, 2001, and December 4, 2001, respectively, more than a year after the filing of the instant petition on October 2, 2000. 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. As such, the Microsoft certification was obtained after the petition's filing date, and therefore is not relevant to this case. Furthermore, upon review of the beneficiary's foreign employment letters, it is not clear whether the beneficiary actually performed the programming or whether he merely assisted in the development of the software described. In view of the foregoing, the evaluation is accorded little weight.

The petitioner has not demonstrated that the beneficiary's computer training is equivalent to an academic major field of study at a United States institution. Nor has the petitioner shown that his employment 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 computer-related field of study. It is also noted that the record does not contain any evidence that the beneficiary's educational, training, 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.