

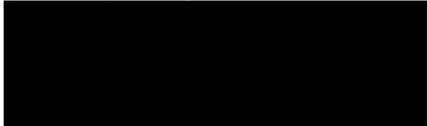


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U.S. Department of Justice

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-98-141-52426 Office: Vermont Service Center

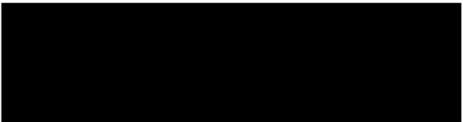
Date: AUG - 6 2002

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 non-profit organization that promotes the awareness of the Hindi language in India and worldwide. It has one employee. It seeks to employ the beneficiary as a program coordinator for a period of one year. 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.

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.

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

As Program Coordinator, [the beneficiary] will be required to oversee the publication of our magazine as well as the publication and promotion of other Hindi books and literature. He will coordinate and formulate programs appropriate to the promotion of the Hindi language as well as organize cultural programs connected to Hindi culture. Furthermore, he will organize seminars and conferences on various aspects of the Hindi language including its historical development, present use and future trends.

The petitioner further describes the proffered position's educational requirements, in part, as follows:

The position requires a minimum of a Bachelor degree in fields such as journalism, mass communications, or business administration (with emphasis on management of non profit organizations). Also, the qualified candidate must have an indepth knowledge and understanding of the Hindi language, culture, and literature. Only a person with these minimum qualifications would be able to effectively carry out the duties of a Program Coordinator.

In a report from New Delhi, India, a consular officer states, in part, as follows:

[The beneficiary's] educational qualifications [are] in the area of commerce, not journalism or publishing, and he lacks the necessary work experience needed for this position . . . Despite the statement by the applicant's attorney that [the beneficiary] is "extremely knowledgeable about . . .

literature, poetry, drama and other writings" the applicant could produce no evidence of this claim. The applicant claimed to have written a few articles about the share market and computers but could not produce copies of these articles. Indeed, except for naming one computer company about which he had allegedly written, he could not even state the subject of any other articles. When asked how he researched companies he had written about, he indicated that he read about them in Indian economic journals and had prepared his articles based solely on information in those articles.

The beneficiary holds a baccalaureate degree in commerce conferred by an Indian institution. He also completed training as a chartered accountant in India. Two credentials evaluation services found the beneficiary's foreign education and approximate nine years of employment experience in accounting, journalism, and business administration equivalent to a bachelor of business administration degree with a concentration in accounting and a bachelor of science degree in journalism conferred by a U.S. institution.

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 evaluation of the beneficiary's foreign credentials is based on education and experience. It is noted that the record does not contain any corroborating evidence to support the evaluators' findings 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). Although one of the evaluators indicates that her school has a program for granting college level credit based on a candidate's foreign educational credentials, training, and/or employment experience, the record contains no evidence that she has authority to grant college-level credit for training and/or experience in the specialty. As such, the evaluations are accorded little weight.

In his letter dated April 10, 1998, the petitioner's general secretary states that, in addition to a baccalaureate degree, the qualified candidate must possess an indepth knowledge and understanding of the Hindi language, culture, and literature. In rebuttal to the consular officer's finding that the beneficiary had not demonstrated that he was knowledgeable of Hindi literature, poetry, drama and other writings, the beneficiary states, in part, in an affidavit dated June 1, 1999:

Further the investigator also challenge [sic] my knowledge of Hindi literature, drama and other writings. My knowledge in this area was not tested presumably because the investigator was ignorant in this area, please note that had [sic] my entire schooling and college education in Hindi[.] Moreover in school and college Hindi literature and poetry was an integral part of my curriculum. I have volunteered for the world Hindi association because of my indepth knowledge and possession for [sic] Hindi literature[,] poetry[,] drama[,] and other writings[.]

Although the record contains various news items that the beneficiary contributed to Indian publications, the record contains no evidence that the beneficiary possesses "an indepth knowledge and understanding of Hindi language, culture, and literature," a requirement for the proffered position that was specified by the petitioner's general secretary. It is also noted that, contrary to the beneficiary's assertions in his affidavit, his college transcripts do not reflect that Hindi literature and poetry were an integral part of his curriculum. Rather, such transcripts reflect business-related courses such as business mathematics, auditing, and company law. As such, the petitioner has not persuasively demonstrated that the beneficiary possesses the indepth knowledge of Hindi language, culture, and literature that is required for the proffered position.

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.