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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

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

[redacted]

1 6 DEC 2002

File: LIN-01-064-50735 Office: Nebraska Service Center Date:

IN RE: Petitioner: [redacted]
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)

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that 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 that 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 that 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, Examinations, on appeal. The appeal will be dismissed.

The petitioner is a company providing software consulting services with seventy employees and an estimated gross annual income of $5 million. It seeks to employ the beneficiary as a programmer analyst for a period of three years. The director determined that the petitioner had not established that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel submits his own statement, as well as a separate statement from the petitioner's human resources manager. Counsel also provides photocopies of previously submitted documentation.

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 determined that the beneficiary's education, training, and work experience are not the equivalent of a bachelor's or higher degree in an area of study related to computers. On appeal, counsel argues that the beneficiary is qualified to perform the duties of the proffered position because he possesses a foreign bachelor's degree in chemical engineering and three years of work experience as a programmer and programmer analyst. Counsel asserts that the beneficiary's education and work experience are the equivalent of at least a United States bachelor's degree in computer science.

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.

A review of the Department of Labor's Occupational Outlook Handbook (Handbook), 2002-2003 edition, at pages 180-183, finds that the usual requirement for employment as a programmer analyst is a baccalaureate degree in computer science, information science, or management information systems (MIS). The record shows that the beneficiary possesses a bachelor of engineering degree in the "chemical branch" conferred by Mangalore University in Mangalagangotri, India. The petitioner has provided an evaluation of the beneficiary's education by an evaluation service. The evaluation states that the beneficiary's foreign education is equivalent to a bachelor of science degree in chemical engineering from an accredited university in the United States. A review of copies of the beneficiary's academic transcripts reveals that he had not taken any courses relating to computers or their applications in achieving this degree. Accordingly, it is concluded that the petitioner has not shown that the beneficiary qualifies to perform the duties of a specialty occupation based upon education alone.

The record contains three letters of employment reflecting the beneficiary's work experience in the period from February 16, 1998 through June 30, 2001. V. Venkata Ramana Rao, Implementation Leader for Reliance Cybertech Pvt., Ltd., stated that the beneficiary worked with this enterprise as a "...SAP Consultant-trainee in ABAP/4 and Sales & Distribution module for implementation on

domestic products from February 16, 1998 to May 30, 1998." The beneficiary continued his employment with this enterprise from February 7, 1991 to April 15, 1997, as reflected in a letter signed by S. Krishna Rao, Manager. In his letter, Mr. Rao indicated that the beneficiary was involved in the implementation of SAP projects for the customers of Reliance Cybertech Pvt., Ltd., from May 1998 to September 27, 1998, the date the letter was executed. Mr. Rao stated that the beneficiary's duties in this period included building prototypes, presentations to companies, and training for personnel of clients.

In addition, the record contains a letter signed with an illegible signature that bears the letterhead of the al-Futtaim Trading company of Dubai, U.A.E. The writer of the letter stated that the beneficiary had been employed by this enterprise's computer division as a systems engineer from December 10, 1998 to June 30, 2001. The writer failed to provide any description of the duties and responsibilities of the beneficiary in the position of systems engineer.

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. As of the date of this decision, the petitioner has failed to submit an evaluation of the beneficiary's work experience for the purpose of determining degree equivalence.

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.

While the employment letters discussed previously contain minimal descriptions of the duties performed by the beneficiary in the positions he held from 1998 to 2001, no evidence has been provided from any of his former employers or the clients and customers of these employers, that would tend to corroborate the work experience claimed in these letters. Consequently, 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.

Counsel asserts that these employment letters contain enough details about the beneficiary's job duties to support a determination that the positions were those of a programmer and programmer analyst. Counsel argues that the beneficiary's foreign degree in chemical engineering and his work experience are the equivalent of at least a U.S. bachelor's degree in computer science. However, counsel has not submitted any evidence which would tend to support the arguments put forth on appeal. It was held in Matter of Obaigbena, 19 I. & N. Dec. 533, 534 (BIA 1988) and Matter of Ramirez-Sanchez, 17 I. & N. Dec. 503 (BIA 1980), that the assertions of counsel do not constitute evidence.

The record does not contain evidence establishing that the beneficiary has received recognition of expertise as a programmer analyst by at least two recognized authorities in the same 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 beneficiary 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 programming analysis. 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 computer science, information science, or management information systems. Therefore, the petitioner has failed to demonstrate that the beneficiary is qualified to perform services in the proffered position of programmer analyst.

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.