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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: WAC-01-031-53506 Office: California Service Center

Date: DEC 18 2002

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 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 for Examinations on appeal. The appeal will be dismissed.

The petitioner is a telecommunications software business with 25 employees and an estimated gross annual income of \$55 billion. 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 beneficiary does not hold a baccalaureate or higher degree required by the specialty occupation. The director further found that the record does not contain any corroborating evidence to support the evaluator's finding that the beneficiary's academic and employment backgrounds qualify him for the proffered position, 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).

On appeal, counsel states, in part, that the beneficiary's academic background includes courses relevant to the proffered position, such as engineering mathematics and electrical engineering. Counsel also states that the beneficiary's work history demonstrates that

he is qualified to perform the proposed duties. Counsel further states that the beneficiary has been employed in H-1B status as a software engineer with another U.S. company from 1999 to the present.

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, 2002-2003 edition, at page 170, finds that for software engineer positions, most employers prefer to hire individuals who have at least a bachelor's degree and broad knowledge and experience with computer systems and technologies. Usual degree concentrations for applications software engineers are computer science or software engineering; for systems software engineers, usual concentrations are computer information systems or computer science. In the instant case, the record contains a letter from the petitioner's chief executive officer dated October 20, 2000, who states, in part, that the proffered position requires the services of an individual with a bachelor's degree in computer science or related discipline. The beneficiary holds a baccalaureate degree in metallurgy and a master's degree in business administration conferred by Indian institutions. The record also indicates that at the time of the filing of the present petition, the beneficiary had approximately two years of relevant employment experience (from December 5, 1998 through November 3, 2000), as well as some computer training. The beneficiary's educational, training, and employment backgrounds have been found by a credentials evaluation

service to be equivalent to a baccalaureate degree in computer science 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 evaluation of the beneficiary's foreign credentials is based on education, training, and experience. The evaluator bases his conclusion, in part, on the beneficiary's employment experience in the computer science field from "March of 1998 to the present (3+ years)..." As the petition was filed on November 3, 2000, the time period beginning in March of 1998 through the filing date of the petition is less than three years rather than more than three years. 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, the record indicates that the beneficiary was employed at Kalyani Brakes Limited as a senior engineer from January 10, 1992 - December 1, 1998. It is unclear why the evaluator chose "March of 1998" as the starting date of the beneficiary's employment experience in the computer science field.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. Matter of Ho, 19 I&N Dec. 582. (Comm. 1988).

The petitioner has not persuasively demonstrated that the beneficiary's educational background, training, and work experience are equivalent to an academic major field of study in computer science or an equivalent thereof at a United States institution. Nor has the petitioner persuasively shown that the beneficiary's employment experience was experience in a specialty occupation or that it is sufficient to overcome his lack of a degree in a computer-related field of study. Furthermore, as the director correctly noted in his decision, the record does not contain any corroborating evidence to support the evaluator's finding 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). For these reasons, the evaluation is accorded little weight.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specific specialty. The record contains no evidence that the beneficiary holds a state license, registration, or certification that 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.

With respect to counsel's objection to denial of this petition in view of the approval of a similar petition in the past, the Associate Commissioner, through the Administrative Appeals Office, is not bound to follow the contradictory decision of a service center. Louisiana Philharmonic Orchestra v. INS, 2000 WL 282785 (E.D.La. 2000), aff'd, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S. Ct.51 (U.S. 2001).

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.