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Immigration and Naturalization Service

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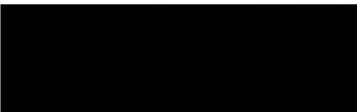
OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC-02-031-58540 Office: California Service Center

Date: DEC 18 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 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 sustained.

The petitioner is a manufacturer of computers and a consultant on software development and information technology with 5 employees and a gross annual income of \$350,000. 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 services in the specialty occupation.

On appeal, counsel submits a brief along with additional supporting 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 denied the petition because the evidence failed to establish that the beneficiary had a degree in the specialty or its equivalent and that the beneficiary was qualified to perform services in the specialty occupation.

On appeal, counsel states that, based on the determination of a recognized expert in credentials evaluation, the beneficiary's qualifications are equivalent to or exceed a baccalaureate degree in computer science from an accredited U.S. university. Counsel asserts that the evidence submitted demonstrates that the beneficiary has the education, experience and training to perform the duties of the offered specialty occupation.

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 Computer Science degree along with a Master of Science degree in physics from the University of Karachi, Pakistan. In addition, the beneficiary's credentials include a Network Associate Certificate from Cisco Systems (CCNA) along with a Microsoft Professional Systems Engineer Certificate from Microsoft. The petitioner also provided letters of reference detailing the beneficiary's work experience over the last 15 years in such areas as software development, computer programming, system analysis and design, and assistance with the daily mechanics of network maintenance and operation.

The petitioner has submitted an evaluation of the petitioner's credentials from [REDACTED] of the Multinational Education & Information Services, Inc. [REDACTED] background material indicates he has had extensive experience in the area of academic credentials evaluation, having served as a consultant to governmental as well as academic institutions. In his initial evaluation accompanying the petition, [REDACTED] stated that the beneficiary's Bachelor of Science and Master of Science degrees were equivalent to a Bachelor degree in Physics from an accredited U.S. university. Subsequently, in response to the Service's Request for Evidence [REDACTED] amended his evaluation, stating that the beneficiary's Bachelor of Science degree and Master of Science degree were equivalent to a baccalaureate degree

in computer science and physics from an accredited U.S. university.

In his decision, the director noted that [REDACTED] amended evaluation of the beneficiary's credentials, in response to the Service's Request for Evidence, was at variance with his initial evaluation, and that the evaluator failed to provide an explanation for this apparent discrepancy. The director also indicated that the evaluator's determinations were not accompanied by additional supporting evidence and that the petitioner failed to provide a detailed description of the courses for which the beneficiary was awarded certificates, both of which had been requested by the Service.

On appeal, the petitioner provides website printouts of detailed descriptions of the pertinent courses and levels of instruction required in attaining certifications from Cisco Systems and Microsoft. In addition, the petitioner, on appeal, submits a subsequent appraisal from the evaluator, Dr. Sambandham, who asserts that the beneficiary's education was equivalent to bachelor degrees in computer science and physics, respectively, from an accredited U.S. university. [REDACTED] also specified that his conclusions were based on a thorough examination of the beneficiary's transcripts, employment background, and certifications from Cisco Systems and Microsoft.

Dr. Sambandham has not provided an explanation of the apparent discrepancy between his initial and subsequent evaluations, as requested by the director. Nevertheless, this inconsistency is not of such magnitude as to negate the evaluator's findings, which appear reasonable given the documentation contained in the record. An examination of the applicant's transcript from the University of Karachi indicates extensive coursework in introductory and advanced computer science, including database management, system programming, computer graphics, system analysis and design, advanced programming languages, and computer theory and construction. In addition to having obtained certifications from both Cisco Systems and Microsoft, the record indicates the beneficiary has had at least 15 years of employment as a computer programmer, systems analyst and software developer. Accordingly, it is concluded that the petitioner has demonstrated that the beneficiary qualifies to perform the duties of the proffered position.

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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.