



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536



File: EAC-01-225-53748

Office: Vermont Service Center

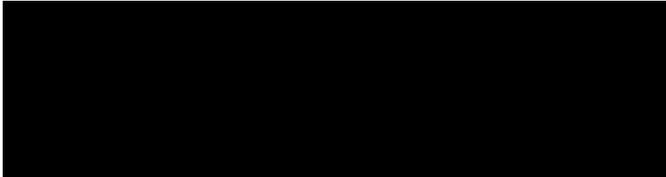
Date: DEC 31 2002

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, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a retail computer store with 11 employees and a gross annual income of \$3,417,896. It seeks to employ the beneficiary as a computer technician for an unspecified period of time. The director denied the petition because the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary qualifies to perform services in a specialty occupation. The director also denied the petition because the petitioner had failed to submit a certification from the Department of Labor that a Form ETA 9035 Labor Condition Application (LCA) had been properly filed.

On appeal, counsel submits a brief and additional documentation.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay,
3. Evidence that the alien qualifies to perform services in the specialty occupation as described in paragraph (h)(4)(iii)(A) of this section, . . .

The director denied the petition because the petitioner had failed to submit a certification from the Department of Labor that an LCA had been properly filed. On appeal, counsel states that the petitioner submitted an LCA with the petition. A review of the record reveals that the LCA submitted by the petitioner with the initial I-129 petition was not certified by an authorized Department of Labor official pursuant to 8 C.F.R. 214.2(h)(4)(i)(B)(1). As the certification block is incomplete, the petition may not be approved.

Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and

- (B) 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.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The director also denied the petition because the petitioner had not shown that a baccalaureate degree in a specific specialty is the normal minimum requirement for entry into the occupation.

On appeal, counsel asserts that a baccalaureate degree is the standard requirement for the position being offered to the beneficiary.

The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

1. Troubleshoot and diagnose problems with computers, printers, and computer peripherals.
2. Repair computers, printers, peripherals.
3. Diagnose software problems.
4. Repair software installations.
5. Configure new computer systems.
6. Order and track parts for repairs.
7. Consult with customers about their repairs.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding.

The duties of the proffered position most closely resemble those of a technical support specialist. A review of the Department of Labor's Occupational Outlook Handbook (Handbook), 2002-2003 edition, at page 173 finds no requirement of a baccalaureate degree in a specific specialty for employment as a technical support specialist. There are a multitude of ways workers can become a computer support specialist. While some employers prefer to hire persons with some formal college education, others will accept a computer-related associate degree. Many companies are becoming more flexible about requiring a college degree for support positions because of the explosive demand for specialists. However, certification and practical experience demonstrating these skills will be essential without a degree. Thus, the petitioner has not shown that a baccalaureate degree in a specific specialty is the normal minimum requirement for entry into the occupation.

Additionally, the petitioner has not provided any documentation to show that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty for the offered position. Furthermore, the petitioner did not submit sufficient evidence to show that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals with a baccalaureate degree in a specific specialty in parallel positions. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher

degree in a specific specialty.

On appeal, counsel submits a letter from the petitioner's president, [REDACTED] in which she states that her company does not require that its technicians hold a bachelor's degree, but it does require that its technicians have training and work experience that are equivalent to the attainment of a baccalaureate degree. Counsel also submits a letter from [REDACTED] Reseller Channel Consultant for the IBM Personal Systems Group, in which he states that his company requires that its technicians have training and experience that are equivalent to the attainment of a baccalaureate degree. However, neither of these individuals has provided any independent evidence to corroborate their statements. Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. The DOL, which is an authoritative source for educational requirements for certain occupations, does not indicate that a bachelor's degree in a specific specialty is the normal minimum requirement for employment as a computer technician. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.

The director also denied the petition because the petitioner had not shown that the beneficiary qualifies to perform services in a specialty occupation. On appeal, counsel asserts that the beneficiary has experience in the specialty that is equivalent to the attainment of a bachelor's degree and that the beneficiary has received recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The record contains no evidence to show that the beneficiary has ever attended, or received a degree from, an institution of higher learning. The beneficiary was awarded a diploma showing completion of training courses in Lotus 1-2-3, dBase III Plus, and Computer Applications from Computer International in Guyana on June 16, 1989. She was subsequently awarded a certificate reflecting completion of training in computer technology from The Computer International Training Centre in Guyana on August 22, 1989. The petitioner has submitted several certificates showing that the beneficiary is a certified computer repair technician for the following computer manufacturing companies: Toshiba, Compaq, IBM, Packard Bell, Hewlett Packard, and Cannon Computer Systems.

According to the beneficiary's resume, she was employed by the Ministry of Foreign Affairs in Guyana from 1984 to 1988; by Inform [REDACTED] in St. Martin from 1989-1991; by Spectrum International in St. Martin from 1992-1994; and for LEA Computer Service Center in South Plainfield, New Jersey, from 1995 to 1998. The petitioner has not provided any documentation from these former employers that identify her job title or describe her duties during her employment for those companies. Therefore, the Service will not consider the beneficiary's work experience from 1984 to 1998. The beneficiary has worked for the petitioner as a computer technician since 1998. Although counsel asserts that the beneficiary's computer training and work experience are equivalent to a baccalaureate degree in a specific specialty, the record does not contain any evidence to corroborate this assertion 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). Indeed, the record contains a letter from a credentials evaluation service declining to perform an evaluation of the beneficiary's certificates because they represent training from computer training centers and as such are not subject to an academic evaluation.

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. No evidence has been submitted to show that the beneficiary has any work experience in the field of computer science, information science, or management information systems. 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.