



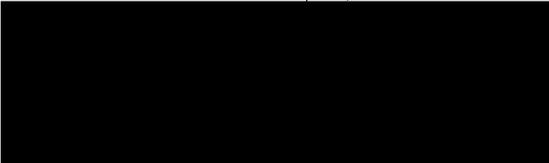
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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
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Washington, D.C. 20536



File: EAC 00 204 50686 Office: VERMONT SERVICE CENTER

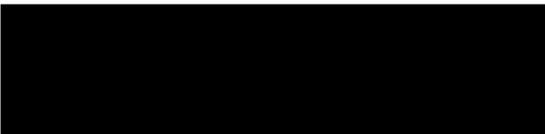
Date: 04 FEB 2002

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

The petitioner is a firm involved in software training development and computer consultancy services with 140 employees and a gross annual income of \$15,000,000. It seeks to employ the beneficiary as a computer programmer analyst for a period of 28 months. The director denied the petition finding that the beneficiary was not qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief.

The regulation at 8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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.

Further, the regulation at 8 C.F.R. 214.2(h)(4)(iii)(A) that a petitioner could qualify the offered position as a specialty occupation if the petitioner could establish that:

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.

In addition, the regulation at 8 C.F.R. 214.2(h)(4)(i)(A)(1) provides that an H-1B classification may be granted to an alien who:

Will perform services in a specialty occupation which requires theoretical and practical application of a body of highly specialized knowledge and attainment of a baccalaureate or higher degree or its equivalent as a minimum for entry into the occupation in the United States, and who is qualified to perform services in the specialty occupation because he or she has attained a baccalaureate or higher degree or its equivalent in the specialty occupation.

The petition was initially supported by a description of the duties of the proffered position that indicates that the beneficiary would be responsible for the following duties:

- Analyzing communications, informational and programming requirements of clients; planning, developing and designing business programs and computer systems;
- Designing, programming and implementing software applications and packages customized to meet specific client needs;
- Reviewing, repairing and modifying software applications and packages customized to meet specific client needs;
- Training clients on the use of software applications and providing trouble shooting and debugging support.

The petition is supported by evidence indicating that the beneficiary has a bachelor's degree in civil engineering. The petition is also supported by evidence that the beneficiary has fulfilled all requirements as a Sun certified programmer for the Java 2 Platform. The director determined that the beneficiary's bachelor's degree in civil engineer and his one computer training course did not qualify him to perform the duties of a specialty occupation in the field of computer programming.

On appeal, counsel has submitted a brief that describes the duties of the proffered position in a completely different fashion than initially described by the petitioner. In addition, counsel also has modified the title of the position from that of a computer programmer to that of a computer programmer process re-engineer. Based on the new description of the duties of the position and the new title of the position, counsel argues that the beneficiary's education and training qualifies him to perform the duties of a specialty occupation.

Counsel's argument on appeal is not persuasive. The record does not establish that the beneficiary is qualified to perform the duties of a specialty occupation. On appeal, counsel has not addressed the basis for the director's decision but instead has attempted to substantially alter the duties and nature of the position initially described in the petition. In view of the conflicting evidence presented by counsel on appeal, this decision will address the position as initially described by the petitioner.

The Department of Labor's Occupational Outlook Handbook, 2000-2001 Edition (Handbook) in its discussion of computer programmers and systems analysts does not indicate that a degree in civil engineering is a minimum entry requirement for entry into these fields. In fact, the Handbook indicates that civil engineers are responsible for the design and construction of roads, buildings, airports, tunnels, dams, bridges, water supply and sewage systems. The record does not demonstrate how the beneficiary's training required to perform the duties of a civil engineer is remotely related to the duties of a computer programmer or systems analyst. Therefore, in order to establish the beneficiary's eligibility to perform duties in a specialty occupation, the petitioner is required to establish that the beneficiary's training, education, and experience are equivalent to an academic degree that would prepare him for a position in the field of information technology.

The record as presently constituted indicates that the beneficiary has a bachelor's degree in civil engineering and has passed one computer course. The record also contains one employment letter as well as the beneficiary's resume.

The regulation at 8 C.F.R. 214.2(h)(4)(iii)(D)(5) allows the Service to determine whether an alien's education and experience are the equivalent of a bachelor's degree. The regulation provides that three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. The regulation also provides that 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. Finally, in order to establish the alien's experience and training is equivalent to academic training, the regulation provides that one of the following types of documentation must be submitted:

1. Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;

2. Membership in a recognized foreign or United States association or society in the specialty occupation;
3. Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
4. Licensure or registration to practice the specialty occupation in a foreign country; or
5. Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

While counsel has submitted an employment letter, it does not describe the beneficiary's duties. Further, counsel has not submitted any of the five types of documentation enumerated above. As a result, it has not been shown that the beneficiary has the equivalent of a bachelor's or higher degree in a field related to information technology. Therefore, the director's decision will not be disturbed.

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.