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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: EAC-01-008-52440 Office: Vermont Service Center Date: 05 FEB 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)

PUBLIC COPY

IN BEHALF OF PETITIONER: SELF-REPRESENTED

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

The petitioner is a computer software engineering business with 5000 employees and a gross annual income of \$471,500,000. It seeks to employ the beneficiary as a programmer analyst II 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, the petitioner 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 computer-related degree. On appeal, the petitioner states, in part, that the beneficiary's educational background which has been determined to be equivalent to a bachelor of science degree in mathematics and accounting, qualifies him to perform the duties of the proffered position. The petitioner further states that the beneficiary is a veteran programmer/analyst. The petitioner additionally states that other U.S. government agencies have stated that in addition to computer science degrees, a number of fields are acceptable educational preparation for professional-level computer positions, including mathematics.

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 science degree in mathematics conferred by an Indian institution and a final examination certificate conferred by an Indian accounting institution. A credentials evaluation service found the beneficiary's educational background to be equivalent to a bachelor of science degree in mathematics and accounting from an accredited institution of higher education in the United States. The Department of Labor's Occupational Outlook Handbook, 2000-2001 edition, at pages 111-112 finds that the usual requirement for employment as a computer scientist, systems analyst, or engineer is a baccalaureate degree in computer science, information science, or management information systems. Accordingly, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in the specialty occupation based upon education alone.

The record also indicates that the beneficiary had over nine years of computer-related employment experience at the time of the filing of the present petition. In a letter dated September 8, 2000, the petitioner's director-legal states in part that:

We believe that [the beneficiary's] education and experience qualify him for this project.

Although the petitioner indicates that the beneficiary qualifies to perform the proposed duties based on his education and experience, the evaluation of the beneficiary's foreign credentials is based on education only. It is noted that although the beneficiary's mathematics background is relevant to the proposed job duties, it does not automatically qualify him for a programmer/analyst

position. The petitioner has not established that the beneficiary has the necessary computer-related training such as object-oriented programming, database design/development, and UML modeling, that is necessary to qualify for the proffered position.

The petitioner has not demonstrated that the beneficiary's computer training is equivalent to an academic major field of study at a United States institution. Nor has the petitioner shown that his employment experience was experience in a specialty occupation or that it is sufficient to overcome the beneficiary's lack of a degree in a specialized and computer-related field of study.

The petitioner correctly argues that there is no universally accepted way to prepare for a career as a computer professional. It is incumbent upon the petitioner, however, to demonstrate that the beneficiary's educational and/or employment background qualifies him for the proffered position. Here, the record as it is presently constituted does not demonstrate that the beneficiary's educational background in mathematics and accounting qualifies him for the proffered position. Nor does the record contain any independent evidence 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, demonstrating that the beneficiary's educational background in combination with his employment experience qualify him for the proffered position.

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 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.