



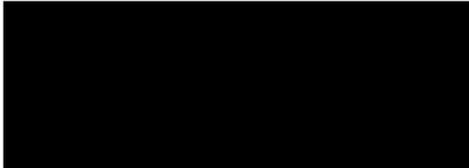
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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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File: LIN 00 148 51917

Office: NEBRASKA SERVICE CENTER

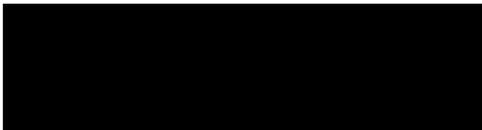
Date: 15 FEB 2002

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

The petitioner is a firm that provides engineering and engineering support staffing, outsourcing and consulting with 34,000 employees and a gross annual income of \$1.5 billion. It seeks to extend the employment of the beneficiary as a computer programmer/analyst for an additional period of eight months. The director denied the petition finding that the beneficiary was not qualified to perform duties in a specialty occupation.

On appeal, counsel for the petitioner asserts that the director's decision disregarded certain portions of the evidence presented, misapplied the law, and misinterpreted evidence. Counsel also indicated that a brief would be submitted in support of the appeal within 30 days. As the 30 day period of time has now expired and counsel's brief has not yet been received, the record must be considered complete.

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 is supported by a description of the duties of the proffered position that indicates that the beneficiary will be required to, among other things, provide software design development, implementation, testing for customers, customer training, monitoring and co-development. In addition, the beneficiary will be required to design models and create drafts of projects, coordinate project development, apply knowledge of applicable standards of design and system management, and design and develop projects using object-oriented methodology and computer languages.

The petitioner asserts that the position is a professional one and requires an individual with a bachelor's degree in computer engineering, computer science, engineering or a related field. The petition is supported by an evaluation performed by a professional credentials evaluation service that indicates that the beneficiary's education and experience are the equivalent of a bachelor's degree in electrical engineering.

The director determined that the petitioner had not established that the beneficiary had a bachelor's or higher degree or its equivalent and was not qualified to perform duties in a specialty occupation.

Upon review, the record does not establish that the beneficiary is qualified to perform the duties of a specialty occupation. As a result, the director's decision will be affirmed.

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 specialty.

The record in this matter contains an evaluation performed by a professional credentials evaluation service that indicates that the combination of the beneficiary's nine years of experience and his two-years of academic study are equivalent to a bachelor's degree in business administration.

The regulation at 8 C.F.R. 214.2(h)(4)(iii)(D) describes the methods that a petitioner can use to establish that the beneficiary has the equivalent of a bachelor's degree. The regulation at 8 C.F.R. 214.2(h)(4)(iii)(D)(3) clearly indicates that evaluations performed by credentials evaluators are limited solely to the beneficiary's educational achievements and are not to address the beneficiary's employment. Since the evaluation submitted by the petitioner considers the alien's employment history, and was performed by a credentials evaluation service, it does not comport with the Service's regulations and is of little value in this proceeding. Further, it is noted that the evaluator has not specifically demonstrated how the evaluation was performed or the basis for making it (including copies of the relevant portions of any research materials used).

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 equivalent to 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 are 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 the record contains employment letters relating to the beneficiary's past employment, none of the letters contain a comprehensive description of the beneficiary's duties. In addition, the record does not contain any evidence establishing that the beneficiary is a member of an organization whose prerequisite for entry is a baccalaureate degree in a specialized area of study. The record does not contain any evidence that the beneficiary holds a state license, registration, or certification that authorizes him to practice a specialty occupation in the United States. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary qualifies 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.