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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-01-062-51980 Office: Vermont Service Center Date: 20 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)

IN BEHALF OF PETITIONER:  
[Redacted]

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

The petitioner is a software development and computer consultancy business with 32 employees and an approximate gross annual income of \$3 million. It seeks to employ the beneficiary as a technical recruiter for a period of three years. The director determined that the petitioner had not established that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel submits a brief and additional 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 concluded that the petitioner had failed to establish that the beneficiary's foreign education is equivalent to a bachelor's degree in management information systems. On appeal, counsel argues in part that the beneficiary has the equivalent of a bachelor's degree in management information systems and that such degree is a standard minimum requirement for the position of technical recruiter.

The record shows that the beneficiary has a Bachelor of Arts degree in History and a Master of Arts degree in Political Science from Punjab University in India. The applicant subsequently completed a Bachelor of Education degree from Annamalai University in India. She also holds a Graduate Diploma in Commerce (Business Systems) from the University of Wollongong in Australia, as well as a

Certificate in Computer Science from the National Institute of Information Technology.

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.

An academic credentials evaluator found the beneficiary's foreign education to be equivalent to a Master of Arts degree in Political Science and a Bachelor of Science degree in Management Information Systems from an accredited university in the United States.

In response to a Service request for additional evidence, the petitioner submitted another evaluation report from Professor [REDACTED]

[REDACTED] Professor of [REDACTED] of Business Management, Baruch College, The City University of New York. Professor [REDACTED] states that she is a university official who is authorized to grant college-level credit based on a candidate's foreign educational credentials, training and/or work experience and that [REDACTED] is an accredited college which has a program for granting such credit based on an individual's training and/or work experience.

Professor [REDACTED] finds the beneficiary's Bachelor of Arts degree in History and Master of Arts degree in Political Science from an Indian University to be equivalent to a Master of Arts degree in Political Science from an accredited institution of higher education in the United States. She further finds the

beneficiary's Bachelor of Education Degree from Annamalai University to be equivalent to a bachelor's level major in Education from an accredited institution of higher education in the United States.

Professor [REDACTED] notes that the beneficiary completed a diploma program in Commerce, with a specific concentration in Business Systems, at the University of Wollongong. As part of this program the beneficiary completed courses in Business Computer Systems, Structured Business Programming, Data Management, Management Information Systems, Information Systems Management, and related subjects. Professor Harpaz further notes that the beneficiary completed one semester of course work in Computer Science at the National Institute of Information Technology in India. The professor concludes that the beneficiary has completed the equivalent of an additional bachelor's-level major in Management Information Systems from an accredited institution of higher learning in the United States.

On appeal, counsel asserts that the beneficiary has the equivalent of a bachelor's degree in management information systems and that the usual minimum requirement for the position of technical recruiter is a baccalaureate degree in either computer science, management information systems, or a related discipline, and/or professional experience in these fields. In support of his assertion, counsel submits an advisory opinion letter from Pai-Chun Ma, Associate Professor of Computer Information Systems, Zicklin School of Business, Baruch College - The City University of New York. Professor Ma states that the normal minimum requirement for positions in the field of management information systems, such as programmer/analyst, support specialist, database analyst, and database administrator, is a Bachelor of Science degree in Management Information Systems.

In view of the foregoing, it is concluded that the petitioner has submitted sufficient documentation to show that the beneficiary qualifies to perform services in a specialty occupation.

It is noted that the position of personnel recruiter does not normally qualify as a specialty occupation. However, some of the duties of this particular position involve technical work in the field of management information systems. Specifically, the holder of the proffered position will define and develop product requirement, functional specifications, required tools and environment of various clients; design and develop system codes; define external product requirements and participate in systems development; perform design reviews; document design and code; and test and integrate applications. These are duties typically performed by individuals with a bachelor's degree in management information systems. Therefore, in this case, it appears that the

proffered position of technical recruiter does qualify as a specialty occupation.

Despite the petitioner's successful rebuttal to the director's objections, the petition may not be approved. The petitioner has provided a certified labor condition application which was certified on December 19, 2000, a date subsequent to December 14, 2000, the filing date of the visa petition. Regulations at 8 C.F.R. 214.2(h)(4)(i)(B)(1) provide that before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application. Since this has not occurred, it is concluded that the petition may not be approved.

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.

**ORDER:** The appeal is dismissed.