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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-00-210-52516 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:

SELF-REPRESENTED

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

The petitioner is a software development company with 112 employees and a gross annual income of \$12 million. It seeks to employ the beneficiary as a software engineer 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, the petitioner submits a brief and additional documentation.

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 petitioner had failed to establish that the beneficiary qualifies to perform services in a specialty occupation. Specifically, the director noted that the petitioner had not submitted an evaluation to show that the beneficiary's work experience, in combination with his formal education, is the equivalent of a bachelor's degree in computer science. On appeal, the petitioner argues that the beneficiary's four years of work experience and his formal education are the equivalent of a bachelor's degree in computer science and submits a new evaluation from the same person who performed the initial evaluation of the beneficiary's academic credentials.

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 possesses a bachelor's degree in mechanical engineering from an Indian university. The record contains an evaluation of the beneficiary's academic credentials by Beth Cotter, President of [REDACTED] Ms. Cotter finds the beneficiary's degree in mechanical engineering to be equivalent to a bachelor of science degree in mechanical engineering from a regionally accredited university in the United States.

The beneficiary does not hold a United States baccalaureate or higher degree or a foreign degree which is equivalent to a United States baccalaureate or higher degree in computer science, information science, or management information systems from an accredited college or university. Nor does the beneficiary hold an unrestricted State license, registration, or certification which authorizes him to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D), equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- 1) 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;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP) or Program on Noncollegiate Sponsored Instruction (PONSI);

- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . .

There is no indication in the record that the beneficiary has completed recognized college-level equivalency examinations or special credit programs, such as CLEP or PONSI. Additionally, the petitioner has not submitted evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty

On appeal, the petitioner submits a new evaluation report from [REDACTED] the same person who performed the original evaluation of the beneficiary's academic credentials. [REDACTED] finds the beneficiary's work experience in the computer field to be equivalent to one year of university level study in computer science and, therefore, concludes that the beneficiary has the equivalent of a bachelor of science in mechanical engineering with an additional major in computer science from an accredited educational institution in the United States. [REDACTED] indicates that she based her finding on "statements" from the Indian Institute of Science, Blue Star Ltd., and Wipro Ltd., the beneficiary's former employers.

This Service uses an independent evaluation of a person's foreign credentials in terms of education in the United States as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be rejected or given less weight. See Matter of Sea, Inc., 19 I&N Dec. 817 (Comm. 1988). In this case, [REDACTED] has not stated, or provided any documentation to show, that she is a college or university 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. Accordingly, [REDACTED] finding that the beneficiary has the equivalent of a bachelor's degree in computer science based on his work experience is accorded little weight.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(5), the Service may determine that equivalence to completion of a baccalaureate degree in a specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition for expertise in the specialty occupation as a result of such training and experience. . . . 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 evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record shows that the beneficiary has approximately four years of work experience. The beneficiary worked for the Indian Institute of Science, Department of Aerospace Engineering, as a project assistant on a project entitled "Development of Test Rig and Model Rotor Blades for Evaluation of Rotor Aerodynamic and dynamic Characteristics" from October 1, 1996 to October 30, 1998. During his tenure with the project, he designed most of the mechanical parts of the test rig. He was also assigned to do computer programming in C and JAVA for some of the applications. Thus, while the beneficiary did some programming work, the majority of the work he performed for the Indian Institute of Science was related to his major field of study, mechanical engineering.

The beneficiary worked for Blue Star, Ltd. as a software engineer from November 11, 1998 to September 15, 1999. However, no letter has been provided from his employer describing the duties performed by the applicant during his employment for that company.

The beneficiary subsequently worked for Wipro Infotech Software and Services in Bangalore, India as a senior systems engineer from October 1999 to October 2000. The petitioner provided a copy of the beneficiary's employment contract with Wipro, but the contract merely describes the salary, benefits, and the conditions of the beneficiary's employment for Wipro. Neither the petitioner nor the beneficiary has provided a letter from Wipro describing the duties performed by the applicant during his employment for that company. In view of the foregoing, it is concluded that the record does not contain sufficient evidence to show that the beneficiary's claimed four years of work experience required the theoretical and practical application of specialized knowledge required by the specialty occupation and 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.

Neither counsel nor the petitioner has submitted any evidence to demonstrate recognition of the beneficiary's expertise in the specialty occupation by recognized authorities in the same specialty occupation. No published material by or about the alien in professional publications, trade journals, or major newspapers has been submitted. Nor has any evidence been submitted to show that the beneficiary holds licensure or registration to practice the specialty occupation in a foreign country or that the beneficiary has membership in a recognized foreign or United States association or society in the specialty occupation. Furthermore, neither counsel nor the petitioner has submitted any documentation from a recognized authority stating that the beneficiary has made significant contributions to the field of computer programming.

In view of the foregoing, it is concluded that the petitioner has not submitted sufficient documentation to clearly establish that the beneficiary's educational, training, and employment background are equivalent to a second major in computer science, information science, or management information systems.

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.