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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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File: EAC 01 009 53478

Office: VERMONT SERVICE CENTER

Date: JAN 22 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 computer systems consulting with 25 employees and a gross annual income of \$2,500,000. It seeks to employ the beneficiary as a computer programmer analyst for approximately a three-year period. The director denied the petition finding that the petitioner had failed to establish that the beneficiary was 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 director denied the petition finding that the petitioner had failed to establish that the beneficiary's degree in applied physics and his work experience qualified him to perform duties in a specialty occupation. On appeal, counsel for the petitioner asserts that the beneficiary's degree in physics and his background in mathematics qualifies him to perform the duties of the position because a bachelor's degree in computer science is not the only acceptable discipline.

Upon review, counsel has not established that the beneficiary is qualified to perform the duties of a specialty occupation in the field of computer science. The record does not establish that the beneficiary has a bachelor's or higher degree or its equivalent in a field related to the specialty occupation.

The record reflects that the beneficiary has the equivalent of a bachelor's degree in applied physics. The Department of Labor's Occupational Outlook Handbook, (Handbook), 2000-2001 edition, indicates that physicists explore and identify basic principals governing the structure and behavior of matter. Based on observation and analysis, they attempt to discover and explain laws describing the forces of nature. The petitioner has not demonstrated how the training required to perform the duties described above is in any way related to the training required to perform the duties of a computer programmer or analyst.

Further, the Handbook, in its discussion of occupations in the computer field does not indicate that a degree in physics, in and of itself, is sufficient academic preparation for a position in the computer field. Therefore, in order for the beneficiary to qualify to perform the duties of a specialty occupation in the field of information technology, the petitioner must establish that the beneficiary's education and experience are equivalent to a degree in information technology or a related field.

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 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.

The record contains an employment letter that merely indicates that the beneficiary was employed as a software consultant from August 1999 through March 2000. However, the employment letter does not demonstrate that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation. Further the letter is not accompanied by 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 the specialty occupation. 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.