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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 00 272 53235 Office: Vermont Service Center Date: 31 JAN 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 for Examinations on appeal. The appeal will be dismissed.

The petitioner is a software development company that specializes in building and marketing customized software. It also undertakes product implementation and customization projects at client sites. It seeks to employ the beneficiary as a programmer analyst for a period of two years and eleven months. The director determined the petitioner had not established that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel argues that the offered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation. Counsel states that evaluations confirm the beneficiary's qualifications and ability to perform the job duties of the present position. Counsel further states that it is the petitioner's understanding that the beneficiary is currently employed in a qualifying position abroad and that he was earlier employed at two other firms in jobs that are in the field of computer science.

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.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,

2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay,

3. Evidence that the alien qualifies to perform services in the specialty occupation. . .

Two evaluators from a credentials evaluation service found the beneficiary's foreign education at the University of Delhi in India to be the equivalent of three years of study toward a Bachelor of Business of Science degree from an accredited institution of higher education in the United States. The evaluations indicate that the beneficiary completed "not less than one year" of bachelor's -level academic studies concentrating in Computer Science at the National Institute of Information Technology in India. The evaluation service determined that the beneficiary had gained a level of academic competence equivalent to a Bachelor of Science Degree in Computer Science from an accredited United States institution of higher education.

This Service uses independent evaluations of a person's foreign credentials in terms of education in the United States as an advisory opinion only. Where evaluation are not in accord with previous equivalencies or is in any way questionable, they may be rejected or given less weight. See Matter of SEA, Inc., 19 I&N Dec. 817 (Comm. 1988).

The record shows that the beneficiary was awarded a Bachelor of Science degree from the University of Delhi in India in 1994 based upon a three year course of study. However, a review of the submitted transcript indicates that the beneficiary completed no computer courses at the University. The record also shows that he completed three semester courses, each of 26 weeks duration, from the National Institute of Information Technology. As the beneficiary's course work at the University of Delhi did not include any computer courses, and as the credentials evaluators did not explain how the beneficiary's academic studies related to the study of computer science, the evaluations are accorded little weight. Therefore, the beneficiary is not qualified to work in a specialty occupation as a programmer analyst on the basis of education alone.

For the purpose of determining equivalency to a baccalaureate degree in a field related to the job offered in this case, three years of specialized training and/or work experience must be demonstrated for each year of college-level training that the alien lacks. 8 C.F.R. 214.2(h)(4)(iii)(D)(5). Here, the beneficiary needs seven and one half years of experience in the specialty occupation to qualify.

The record shows that the beneficiary worked for [REDACTED] Private Limited as part of Inter Globe Enterprise Limited as a web designer from April 1998 until December 1998. He was also appointed to work as a "Java" programmer by International Software Development Corporation beginning in July 1999. Counsel indicates that it is the petitioner's understanding that the beneficiary is currently employed at Ampersand Software Applications Limited abroad at this time. Accepting the petitioner's assertion, the beneficiary had attained less than seven and one half years of qualifying experience in the field of computer science at the time the visa petition was filed in September 2000. Therefore, the petitioner has not demonstrated that the beneficiary possesses the education, training or experience necessary for the proffered position.

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.