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U.S. Department of Justice

Immigration and Naturalization Service

recognition of status as a
present clearly and in fact
revelation of personal papers

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-01-062-51431 Office: Vermont Service Center

Date: MAY 14 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 is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a software and systems development service with 5 employees and an approximate gross annual income of \$400,000. It seeks to employ the beneficiary as a network analyst for a period of three years. The director determined the petitioner had not established that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, the petitioner 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 denied the petition because the petitioner had failed to establish that the beneficiary holds the equivalent of a four-year degree in computer science or a related field.

On appeal, counsel argues that the beneficiary also holds a postgraduate diploma in computer applications. Counsel asserts that, when the beneficiary's qualifications are considered in their totality, he has in fact completed four years of study directly related to the specialty occupation, and has also obtained Microsoft computer certifications which are widely recognized within the industry.

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 record shows that the beneficiary holds a three-year bachelor of science degree from Mangalore University in India. A credentials evaluation service found the beneficiary's degree to be equivalent to three years toward a bachelor's degree in a "quantitative discipline" offered by an accredited university in the United States. It is noted that the petitioner has not submitted the beneficiary's transcripts from his three-year program at the University of Mangalore. Therefore, it is not possible to determine from examination of the record whether the beneficiary completed any computer-related courses during his studies at that institution.

The beneficiary subsequently completed a one-year "postgraduate" course of study in computer applications. Upon completion of these studies, the beneficiary received the following Microsoft certifications: Microsoft Certified Professional; Microsoft Certified Professional + Internet; and Microsoft Certified Professional - Systems Engineer. On October 30, 2000, the beneficiary completed a two-month training course in LINUX. However, the record does not contain any evidence to show that the beneficiary's computer training, in combination with his three-year

degree, compensates for his lack of a bachelor's degree in a computer related field. Accordingly, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in the specialty occupation based upon education alone.

According to the record, the beneficiary worked for Integrated Computers in India as a "Network Engineer" from October 1, 1999 to July 31, 2000. However, the employment letter from Integrated Computers provides no description of the duties performed by the beneficiary during his employment for that company. The record does not contain any evidence to show that the beneficiary's three-year degree, computer training, and work experience are equivalent to a bachelor's degree in a computer related field from a United States institution such as 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. Nor has the petitioner shown that the beneficiary's employment experience was experience in a specialty occupation or that it is sufficient to overcome the beneficiary's lack of a degree in a specialized and computer-related field of study.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specialized area. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes him to practice a specialty occupation. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified 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.