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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:



Office: Nebraska Service Center

Date:

18 NOV 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 that 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 that 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 that 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. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reconsider. The motion will be granted. The previous decisions of the director and the Associate Commissioner will be withdrawn, and the petition will be approved.

The petitioner is an employment agency with eight employees and an unspecified gross annual income. It seeks to employ the beneficiary as a programmer for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel argued that the Service has previously determined that the position of a computer programmer is a specialty occupation. Counsel contended that the beneficiary possesses the equivalent of a United States bachelor's degree in computer science by virtue of his education, specialized training, and work experience.

The Associate Commissioner determined that the duties of the offered job parallel those of a programmer analyst, a position normally considered to be a specialty occupation because it requires a baccalaureate degree in a specialized area for employment in this position. However, the Associate Commissioner dismissed the appeal reasoning that the petitioner had not submitted sufficient evidence to establish that the beneficiary was qualified to perform services in the proffered position.

On motion, counsel reiterates his argument that the beneficiary's education, specialized training, and work experience are the equivalent of a U.S. bachelor's degree in computer science.

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 possesses a degree in architecture awarded by the Tbilisi State Academy of Fine Arts in Tbilisi, Georgia, and is qualified as an architect/artist. The record further shows the beneficiary has received training in Windows 95, Norton Commander, MS Word for Windows, and MS Excel for Windows. The beneficiary has also completed courses in HTML, ASP, Jscript, VBScript, Visual Basic, advanced Visual Basic programming, OOP and VB, MS SQL, and advanced database programming with VB and ASP. As of the date of filing of the petition, the beneficiary had approximately three and three-quarters years of work experience in the computer science field.

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 or her 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 occupation.

The petitioner submitted an evaluation report from Bradley L. Spencer, an evaluator associated with the Foundation for International Services, Inc. Mr. Spencer found the beneficiary's degree in architecture from the Tbilisi State Academy of Fine Arts, a six-year program, to be to be equivalent to a combined bachelor's degree and master's degree in architecture from an accredited college or university in the United States. Mr. Spencer states that he based this finding on the beneficiary's diploma and transcripts from that institution. Mr. Spencer's evaluation of the beneficiary's academic training at the Tbilisi State Academy of Fine Arts is accepted.

Mr. Spencer further found the beneficiary's university degree in architecture and his computer training, in combination with his work experience, to be equivalent to a bachelor's degree in computer science from an accredited college or university in the United States. However, Mr. Spencer, is not 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.

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 beneficiary's transcript from the Tbilisi State Academy of Fine Arts shows the applicant completed 177 hours of classwork in computing skills. On appeal, counsel submitted an additional transcript from that institution which shows the specific computer classes completed by the applicant and the number of hours as follows:

- (1) Introduction to programming languages (Dos, C, Basic) - 24 hours;
- (2) Introduction to architectural computer applications (Auto CAD 9) - 24 hours;
- (3) Intermediate course in programming languages (C, Basic) - 40 hours;
- (4) Computation methods in structural mechanics - 32 hours; and

- (5) Advanced course in programming languages - 57 hours.

Counsel also submits a transcript from the beneficiary's 8-month training course at the Technical University of Georgia, Department of Computer Science. According to this transcript, the beneficiary completed 216 hours of computer training in the following computer areas:

- (1) Web design, including HTML, ASP, JScript, VBScript;
- (2) Visual Basic 5.0, including introduction to VB, Advanced VB Programming, and OOP and VB;
- (3) MS SQL Server 6.5, including introduction to MS SQL 6.5; SQL and VB; and Advanced Database Programming with VB and ASP.

Counsel also submits a transcript from the Dial Computer Training Studio showing the beneficiary completed 36 hours of introductory courses in MS Dos, Windows 95, MS Word 97 for Windows, and MS Excel 97 for Windows.

For purposes of determining equivalency to a baccalaureate degree, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. In this case, it is concluded the beneficiary has completed the equivalent of approximately one year of college-level training in computer applications.

Therefore, the petitioner must demonstrate that the beneficiary has at least three years of work experience requiring 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.

The record contains letters from the beneficiary's former employers. David Kajain, Head of the Computer Center of the Department of Amelioration & Water Economy, states that the beneficiary was employed by that institution as a full-time programmer from September of 1996 to April of 1998 and provides a list of the beneficiary's duties. George Batsanadze, Director of Georgian Software Systems, Ltd., states in his letter that the beneficiary has been employed by his company as a programmer since April of 1998, and provides a list of the beneficiary's duties. It appears that the work performed by the beneficiary for both employers was essentially that of a programmer analyst.

In view of the foregoing, it is concluded that, as of the filing date of the petition, the beneficiary had approximately three years

and eleven months of work experience as a computer programmer analyst. On motion, counsel submits new and separate letters from both Mr. Kajain and Mr. Batsanadze. Both individuals state that the beneficiary's experience was gained while working with co-workers and supervisors who have a degree or its equivalent in the specialty occupation.

The record contains an advisory opinion letter from Harvey Daniels, President of the Technical Recruiters Network. Mr. Daniels states that the beneficiary's education, training, and work experience qualify him to perform services in the specialty occupation. On motion counsel submits another advisory opinion letter signed by James Pappas, Manager of Executive Search at Motorola Corporation. Mr. Pappas declares that beneficiary is qualified to perform services in the position of programmer analyst as a result of his education, training and work experience. The Service acknowledges that both Harvey Daniels and James Pappas are recognized authorities in the field of computer science. In view of the foregoing, it is concluded that the petitioner has submitted sufficient documentation to establish that beneficiary's educational, training, and employment background are equivalent to a bachelor's degree 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 sustained that burden. Accordingly, the previous decisions of the director and the Associate Commissioner will be withdrawn and the petition will be approved.

**ORDER:** The order of December 8, 2001 dismissing this appeal is withdrawn. The petition is approved.