

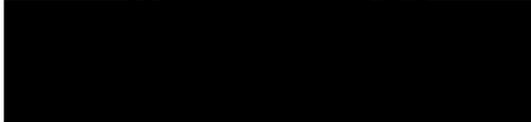


DA

U.S. Department of Justice

Immigration and Naturalization Service

**Identifying data deleted to prevent clearly unwarranted invasion of personal privacy**



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

File: EAC-00-104-50245 Office: Vermont Service Center

Date: OCT 10 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: 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, Acting Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was approved by the Director, Vermont Service Center. Based upon information obtained from the beneficiary during his visa issuance process at the American Embassy, the director determined that the beneficiary was not clearly eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of his intent to revoke approval of the visa petition and his reasons therefore, and ultimately revoked the approval of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a company providing computer consulting and systems development services with 400 employees and a stated gross annual income in excess of \$23 million. It seeks to employ the beneficiary as a software engineer for a period of two years and seven months. The director determined the petitioner had not established that the beneficiary qualifies to perform the duties of the proffered position.

On appeal, counsel 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.

In a report dated March 10, 2001, an officer from the American Consulate in New Delhi, India states in part that the beneficiary had undertaken training at a non-academic vocational institution. The officer notes that the beneficiary was unable to produce any evidence of relevant job experience to compensate for the lack of a university degree. The conclusion of the report is that the beneficiary does not appear to be qualified to perform the duties of the proffered position.

On appeal, counsel argues that the beneficiary is qualified to perform services in the proffered position because he holds the equivalent of a bachelor of science in electronics when his work experience is viewed in conjunction with his education.

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.

A review of the Department of Labor's Occupational Outlook Handbook (Handbook), 2002-2003 edition, at pages 169-171, finds that the usual requirement for employment as software engineer is a baccalaureate degree in computer science, software engineering, or computer information systems. The beneficiary does not hold a baccalaureate degree in any field of study. A credentials evaluation service found the beneficiary's completion of a three year program of study and diploma from the Board of Technical Education in India, equivalent to one year of undergraduate course work toward a "Bachelor of Science in Electronics" from a United States college or university. Accordingly, it is concluded that the petitioner has not shown that the beneficiary qualifies to perform the duties of a specialty occupation based upon education alone.

The record reflects that the Service requested the petitioner to submit an evaluation of the beneficiary's training and work experience for the purpose of determining degree equivalence. While the petitioner submitted employment letters, certificates of excellence, academic transcripts, diplomas, and a copy of the previously discussed evaluation of the beneficiary's education, the

petitioner failed to submit the requested evaluation of the beneficiary's training and work experience.

The certificates of excellence contained in the record reflect that the beneficiary completed requirements to be recognized as a Microsoft Certified Professional in an unspecified area, as well as having completed requirements to be recognized as a Microsoft Certified Professional systems engineer. However, the record does not contain any description of the specific courses of study, the level of practical training, or the total number of hours of the programs that the beneficiary undertook to receive such certifications. In addition, these certificates do not list either the institution where such training was purportedly undertaken, the dates the training took place, or the date of expiration for these certifications. Furthermore, no explanation has been provided as to why the evaluator discussed above did not make any mention of the beneficiary's additional certifications in making an evaluation of his education.

The record contains four letters of employment reflecting the beneficiary's work experience in the period from June 1989 through January 2000. M.N. Omer Khan, Joint Manager (Plant Services) for Uptron India Limited, stated that the beneficiary worked under his supervision as technician apprentice (electronics) from June 29, 1989 to June 29, 1990. Mr. Khan declared that the beneficiary worked on development and maintenance jobs in the field of electronics, analog as well as digital, instrumentation, automatic process control and power equipment. However, the relevance of this particular employment is minimal in that there is no indication that the beneficiary worked with computers in this position.

The beneficiary continued his employment with this enterprise from February 7, 1991 to April 15, 1997, as reflected in two letters signed by D.P. Singh, Assistant Manager (Computer Servicing), and Anil Yadav, Manager (Computer Servicing), respectively. In his letter, Mr. Singh indicated that the beneficiary was involved in providing computer hardware and software solutions to the customers of Uptron India Limited, and that he held the post of junior engineer at the time of resignation from this enterprise. Mr. Yadav stated that the beneficiary's duties in this period included administration of various operating systems (Unix, Novell, and Windows NT), crash recovery of Unix, back-up administration, user administration, DNS configuration and implementation, NFS configuration and administration, and network administration. Mr. Yadav declared that the beneficiary also demonstrated skills with other operating systems including Windows 98, and Windows 95, as well as various products such as Exchange Server on a variety of hardware platforms including Compaq, HP, and IBM.

In addition, the record contains a letter with an illegible signature on "CMC Limited (A Government of India Enterprise)"

letterhead. The writer of the letter stated that the beneficiary had been employed by this enterprise from April 1997 to January 20, 2000, the date the letter was executed. The writer continued that the beneficiary had completed a variety of projects utilizing different hardware tools including Sun Servers, Workstations, and Pentium PC. The writer indicated that the beneficiary's duties included installation, configuration, testing, and implementation of operations with systems such as Sun-Solaris, HP-UX, Windows NT, and SCO Unix.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(1), 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 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. As of the date of this decision, the petitioner has failed to submit the requested evaluation of the beneficiary's training and work experience for the purpose of determining degree equivalence.

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. 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. 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.

While the employment letters discussed previously contain brief descriptions of the duties performed by the beneficiary in the three positions he held from 1989 to 2000, no evidence has been provided from any of his former employers or the clients and customers of these employers, that would tend to corroborate the work experience claimed in these letters. Consequently, it is not possible from examination of the record to determine whether the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation, or 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.

The record does not contain evidence establishing that the beneficiary has received recognition of expertise in software engineering by at least two recognized authorities in the same specialty occupation. 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 her to practice a specialty occupation in a foreign country. The record does not contain any published material by or about the beneficiary in professional publications, trade journals, or major newspapers. No evidence has been submitted to document any achievements which a recognized authority has determined to be significant contributions to the field of the software engineering. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary has the equivalent of a baccalaureate degree in computer science, information science, or management information systems. Therefore, the petitioner has failed to demonstrate that the beneficiary is qualified to perform services in the proffered position of software engineer.

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.