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U.S. Department of Justice
Immigration and Naturalization Service

PUBLIC COPY

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



File: LIN-01-065-55240 Office: Nebraska Service Center

Date: OCT 15 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:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a software development and consulting business with 6000 worldwide employees, 1700 U.S. employees, and a gross annual income of \$156 million. It seeks to employ the beneficiary as a business 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. The director further found that the petitioner had not submitted a labor condition application.

On appeal, counsel submits a brief.

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 not submitted a labor condition application or demonstrated that the beneficiary's degree in commerce qualified him to perform the proposed duties. The director further found that the petitioner had not shown that the beneficiary had any computer-related employment experience. On appeal, counsel states, in part, that the beneficiary's extensive knowledge and specialty in the area of Oracle Financials qualifies him for the proffered position. Counsel further states that the record contains job postings for similar positions in which the employers required qualified candidates to have a bachelor's degree in business administration or a related discipline. Counsel also submits copies of cases decided by the Department of Labor's (DOL) Board of Alien Labor Certification Appeals Unit to demonstrate that employers may require candidates

for similar positions to have educational backgrounds in business administration. Counsel finally states that the petitioner filed a labor condition application with the DOL on December 11, 2001, and submitted the uncertified labor condition application with the instant petition.

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 . . .

The petitioner has provided a certified labor condition application. Nevertheless, that application was certified on April 16, 2001, a date subsequent to December 15, 2000, the filing date of the visa petition. Regulations at 8 C.F.R. 214.2(h)(4)(i)(B)(1) provide that before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the DOL that it has filed a labor condition application. Since this has not occurred, it is concluded that the petition may not be approved.

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.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[The beneficiary] will be responsible for identifying module champions from the client side and discussing the implementation methodology and project schedule with the client. [The beneficiary] will further be responsible for designing and developing a solution prototype. Finally, [the beneficiary] will be responsible for training the client-users on the Oracle Application and providing maintenance support after implementation.

A review of the DOL's Occupational Outlook Handbook, 2002-2003 edition, at page 182, finds that many businesses require a baccalaureate degree in computer science, information science, or management information systems for employment as a computer scientist, systems analyst, or engineer. The beneficiary holds a baccalaureate degree in commerce conferred by an Indian institution. A credentials evaluation service found the beneficiary's foreign education equivalent to bachelor of business administration degree in accounting. Although both counsel and the petitioner maintain that the beneficiary's educational background in commerce is relevant to the proposed job duties, it does not automatically qualify him for the proffered position. In a letter dated December 14, 2000, the petitioner's director and vice president states that the beneficiary's education and over two years of employment experience in accounting qualify him for the proffered position. The petitioner, however, has not demonstrated that the beneficiary's employment experience was experience in the specialty occupation. Furthermore, the record does not contain any corroborating evidence to support the petitioner's claim 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, as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(1).

Counsel argues that the record contains job postings for similar positions in which the employers required qualified candidates to have a bachelor's degree in business administration or a related discipline. The record as it is presently constituted, however, does not contain such job postings. This office is therefore unable to discuss this portion of counsel's argument further.

Counsel additionally argues that the DOL's Board of Alien Labor Certification Appeals Unit has determined that employers may require candidates for similar positions to have educational backgrounds in business administration. The decisions submitted by counsel have been reviewed, and counsel's argument is noted. For the previously discussed reasons, however, the record does not persuasively demonstrate that the beneficiary in the instant petition is qualified for the proffered position.

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.