



*D2*

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

[Redacted]

File: WAC-01-066-55018 Office: California Service Center

Date: OCT 18 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 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, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an engineering firm with 13 employees and an unspecified gross annual income. It seeks to employ the beneficiary as a CAD/GIS analyst for a period of two years. The director determined that the petitioner had not established that the beneficiary qualifies to perform services in the specialty occupation.

On appeal, counsel submits a brief and additional documentation. 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 noted that the petitioner had not submitted an evaluation of the beneficiary's foreign education, training, and work experience. The director, therefore, determined that the petitioner had not shown that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel submits a credentials evaluation report and states that the petitioner had previously submitted the report in response to the Service's request for additional evidence.

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 was awarded a diploma in civil engineering by the Board of Technical Examination, Department of Technical Education of the Government of Karnataka, India, in July of 1990. A credentials evaluator found the beneficiary's foreign education equivalent to completion of senior high school plus an Associate of Applied Science degree program in Civil Engineering at an accredited academic institution in the United States.

The evaluator stated that the beneficiary subsequently received a certificate confirming successful completion of a 40-hour course in introduction to ARC/INFO in March 1997. The evaluator found this certificate equivalent to completion of advanced specialized training in a GIS software tool in the United States. The evaluator further noted that the beneficiary received a certificate in "C" Programming in June 1997. The evaluator found this certificate equivalent to completion of a non-credit continuing education course in computer programming in the United States.

The evaluator finally noted that the beneficiary has a total of 65 months of progressively responsible work experience. The evaluator found the beneficiary's foreign education, training, and work experience equivalent to a U.S. baccalaureate degree in civil engineering from an accredited university in the United States. The credentials evaluator, David H. Mihalyi, states that he is the Senior Admission Officer for international graduate professional admission for the University of Pittsburgh, where his primary full-time responsibility is the evaluation of foreign academic credentials for admission to the thirteen graduate professional schools at the University of Pittsburgh. Dr. Mihalyi further states that he is also qualified to recommend and approve credit for practical training or experience attachments.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(1), a petitioner can demonstrate that an alien has the equivalent of a U.S. baccalaureate or higher degree by submitting 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 individuals' training and/or work experience. Accordingly, the evaluation by Dr. Mihalyi will be accepted. It is

concluded that the petitioner has overcome the director's objection.

However, the LCA submitted by the petitioner was certified on January 3, 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 Department of Labor that it has filed a labor condition application. As this has not occurred, the petition may not be approved. We note our authority to affirm decisions which, though based on incorrect grounds, are deemed to be correct decisions on other grounds within our power to formulate. Helvering v. Gowran, 302 U.S. 238 (1937); Securities Com'n v. Chenery Corp., 318 U.S. 86 (1943); and Chae-Sik Lee v. Kennedy, 294 F. 2d (D.C. Cir. 1961), cert. denied, 368 U.S. 926.

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.