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



File: LIN-01-203-54510 Office: Nebraska Service Center

Date: OCT 18 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 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 an education and research university with 3,700 employees and a gross annual income of \$168,000,000. It seeks to employ the beneficiary as an information technology specialist 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 director of the international student and faculty services submits additional information. He had indicated that additional evidence would be submitted in support of the appeal on or before February 21, 2002. To date, no additional evidence has been received by this office. Therefore, the record must be considered complete.

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 demonstrated that the beneficiary holds a baccalaureate degree in an area related to the specialty occupation or an equivalent thereof. On appeal, the director of the international student and faculty services states, in part, that the beneficiary has the expertise required for the proffered position. The director submits opinions from three academic experts in the specialty occupation in support of his claim.

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 proposed duties are described as follows:

Serve as College of Fine Arts liaison to the Ohio University Center for Innovation in Technology for Learning (CITL) and Communication Network Services (CNS); offer instructional/information applications/innovations workshops for College of Fine Arts faculty/staff; oversee planning, organization and maintenance of the College of Fine Arts computer server, file maintenance of various accounts and network services, supervision/maintenance of College of Fine Arts computer lab; serve as liaison between college users and vendors; supervisor of part-time technician and student workers; technology advisor to the Dean and serve on the college technology committee.

The proffered position appears to be primarily that of a technical support specialist. In its Occupational Outlook Handbook (Handbook), 2002-2003 edition, the Department of Labor (DOL) describes the position of a technical support specialist, in part, as follows:

Technical support specialists are troubleshooters, providing valuable assistance to their organization's computer users. Because many nontechnical employees are

not computer experts, they often run into computer problems they cannot resolve on their own. Technical support specialists install, modify, clean, and repair computer hardware and software. They also may work on monitors, keyboards, printers, and mice.

Technical support specialists answer phone calls from their organizations' computer users and may run automatic diagnostics programs to resolve problems. They also may write training manuals and train computer users how to properly use the new computer hardware and software. In addition, technical support specialists oversee the daily performance of their company's computer systems and evaluate software programs for usefulness.

The beneficiary holds a master of arts degree in communication arts conferred by a U.S. institution. A review of the DOL's Handbook at page 173 finds that while there is no universally accepted way to prepare for a job as a computer support specialist, many employers prefer to hire persons with some formal college education. A bachelor's degree in computer science or information systems is a prerequisite for some jobs, while other jobs may require only a computer-related associate degree. 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.

The record indicates that the beneficiary had over five years of computer-related experience at the time of the filing of the instant petition. Counsel has provided three letters from university officials, only one of whom states that the beneficiary holds the equivalent of a degree in computer science or an equivalent thereof. The writer, however, does not specify that the beneficiary holds the equivalent of a baccalaureate degree in computer science or an equivalent thereof, nor does the record indicate that the writer is 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).

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.

Beyond the decision of the director, the record contains insufficient evidence to demonstrate that the proffered position is a specialty occupation. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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.