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

File: LIN-99-237-50332 Office: Nebraska Service Center

Date: OCT 29 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)

PHOTOCOPY

IN BEHALF OF PETITIONER:



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. The record of proceeding was forwarded to the Associate Commissioner for Examinations, and the decision of the director was reviewed on certification. The Associate Commissioner for Examinations found, in part, that counsel did not respond to the notice of certification and ultimately affirmed the director's decision. Upon receipt of additional information from counsel claiming that he had filed a brief that had not been considered on certification, the matter was reopened on Service motion pursuant to 8 C.F.R. 103.5(a)(5)(i). The previous decision of the Associate Commissioner will be affirmed.

The petitioner is a telecommunications design and manufacturing business with approximately 4,500 employees and a gross annual income of \$1.6 billion. It seeks to employ the beneficiary as a senior software engineer for an approximate period of two years and seven months. The director determined the petitioner had not established that the beneficiary is qualified to perform the duties of a specialty occupation.

The Associate Commissioner dismissed the appeal reasoning that the petitioner had not established that the beneficiary's education is relevant to the proposed duties. The Associate Commissioner also found that the credentials evaluators had not demonstrated specifically how they had arrived at their conclusions, and therefore their evaluations were accorded little weight. The Associate Commissioner further found, beyond the decision of the director, that the petitioner had not established that the proffered position is a specialty occupation.

On motion, counsel submits additional evidence to demonstrate that the credentials evaluations from Professor [REDACTED] and Professor [REDACTED] establish that the beneficiary holds the equivalent of a baccalaureate degree in computer science. Counsel states, in part, that both professors are officials with the authority to grant college-level credit from universities with established programs for granting credit for work experience. Counsel further states that both professors confirm that the beneficiary possesses over six years of experience in positions of progressively increasing responsibility and sophistication in information technology, computer science and related areas. Counsel correctly states that the Associate Commissioner raised a new issue of whether the position is a specialty occupation, an issue that had not been raised by the director, and therefore the petitioner was never allowed an opportunity to provide such evidence.

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.

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 beneficiary holds a baccalaureate degree in economics conferred by a [REDACTED] institution. All of the credentials evaluation services found the beneficiary's educational background equivalent to a bachelor's degree in economics from a regionally accredited institution/university in the United States. A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, at pages 181-183, finds that the usual requirement for employment as a computer scientist, systems analyst, or engineer is

a baccalaureate degree in computer science, information science, or management information systems. 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 as of the filing of the instant petition, the beneficiary had approximately ten years of computer-related experience, of which the last two years were in H-1B status at Daugherty Systems, Inc.

The record contains the following employment letters:

* A letter dated September 30, 1999, from an official of Ameritech, stating, in part, that the beneficiary has been working in the capacity of a consultant from Daugherty Systems since August 1997;

* A letter dated September 30, 1999, from the technology manager of [REDACTED] stating, in part, that the beneficiary worked in the capacity of management consultant from October 1991 - January 1995;

* A letter dated October 1, 1999, from the manager of Vocal (a [REDACTED] stating, in part, that the beneficiary worked in the capacity of an independent consultant from February 1995 to August 1995.

The record contains the following evaluations:

* Evaluation by [REDACTED] professor of computer science at [REDACTED] who states, in part, that the beneficiary has attained the equivalence of a bachelor of science degree, and has attained the equivalent of three additional years of academic study toward a bachelor of science degree in computer science based upon the completion of ten years of employment experience in computer science and related areas. Professor [REDACTED] concludes that the beneficiary has attained the equivalent of a bachelor of science degree in computer science and economics from an accredited institution of higher education in the United States;

* Evaluation by [REDACTED] associate professor in the Department of [REDACTED] and [REDACTED] at [REDACTED] who states, in part, that the beneficiary has the equivalent of a bachelor of arts degree in economics awarded by a regionally accredited university in the United States. Professor Batra reviewed the three employment letters listed above and concluded that the beneficiary's academic study and

over six years of professional work experience in the field of computer information systems are equivalent to a U.S. bachelor's degree in computer information systems.

This Service uses an independent evaluation of a person's foreign credentials in terms of education in the United States as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be rejected or given less weight. See Matter of Sea, Inc., 19 I&N Dec. 817 (Comm. 1988).

In his evaluation, Professor [REDACTED] includes the beneficiary's employment experience as a senior financial analyst with [REDACTED] as an independent consultant from 1996-1996, and as an employee of the Brazilian government in a tax collection agency, even though the record contains no corroborating evidence of such employment other than the beneficiary's own assertions. It is further noted that although the evaluator states that he has the authority to determine the equivalence of college-level credit for [REDACTED] based on a candidate's foreign educational credentials, training, and/or employment experience in computer science, the record contains no independent evidence that he 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).

Concerning the evaluation from [REDACTED] the record contains a letter dated November 22, 1998, from the dean of the college of business administration at [REDACTED] University who states, in part, as follows:

[REDACTED] is authorized to grant college-level credit for training and/or experience in the field of Management/Computer Information Systems in cases listed below:

[REDACTED] is the Co-ordinator of the Co-Op and Internship program in MIS. In the case of Co-Op, students take a full-time, paid position in a company. In the case of Internship, the students take a part-time position in a company. In either case, students submit a report of their training, which is evaluated by Dr. Batra and a grade is assigned for a 3-credit course

[REDACTED] can waive an MIS course and substitute it for an independent study if the coursework or training/work experience of the student indicates that the course would be of little value

* [REDACTED] can waive the computer skill course CGS 2060 for a student, if asked by the counseling department and if the student training/work experience is adequate. Normally, this determination is done by the counseling department.

The cases in which [REDACTED] is authorized to grant college-level credit for training and/or experience in the field of Management/Computer Information Systems have been reviewed. It does not appear, however, that [REDACTED] 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). Although the above letter indicates that Dr. Batra has some authority to grant college-level credit for training and/or experience in the specialty, the scope of his authority appears very limited. It does not appear that he would have the authority, as an associate professor at Florida International University, to make the determination in the instant case that the beneficiary's academic study and over six years of professional work experience in the field of computer information systems are equivalent to a U.S. bachelor's degree in computer information systems. In view of the foregoing, the evaluations are accorded little weight.

The petitioner has not persuasively demonstrated that the beneficiary's computer training is equivalent to an academic major field of study at a United States institution. Nor has the petitioner shown that his employment experience was experience in a specialty occupation or that it is sufficient to overcome the beneficiary's lack of a degree in a specialized and computer-related field of study.

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 affirmed 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 decision of the Associate Commissioner dated April 10, 2000, is affirmed.