



U.S. Department of Justice

Immigration and Naturalization Service

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



File: EAC-01-203-51552 Office: Vermont Service Center

Date: 16 SEP 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:



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, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an information technology consulting firm with from two to seven employees and a gross annual income of \$559,109. It seeks to employ the beneficiary as a software engineer for a period of three years. The director determined that the petitioner had not established that the beneficiary qualifies to perform services in the specialty occupation.

On appeal, the petitioner 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 beneficiary's baccalaureate degree in civil engineering does not qualify him to work as a software engineer. The director further noted that none of the beneficiary's work experience is in the field of software engineering, but rather in the field of civil engineering. The director, therefore, denied the petition because the petitioner had not shown that the beneficiary qualifies to perform the duties of the proffered position.

On appeal, counsel argues that the beneficiary is well-qualified for the proffered position because the job involves the development and testing of software designed for use by civil engineers in their day-to-day responsibilities. Counsel states that the beneficiary is an experienced civil engineer with information technology (IT) training who will be assisting a group of IT professionals to develop this software. Counsel also requests oral argument in this matter.

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 petitioner is an information technology consulting firm that wishes to employ the beneficiary as a software engineer. According to the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, at page 170, the usual requirement for software engineers is a bachelor's degree in computer science, software engineering, or computer information systems.

The record shows that the beneficiary was awarded a Bachelor (Licentiate) of Civil Engineering diploma in November 1979 by the University of Aleppo in Syria. The beneficiary also completed training courses in Constructional Studies, Design of Foundations, and Design of Earthquake Resistant Buildings. A credentials evaluator found the beneficiary's foreign education equivalent to a Bachelor of Science degree in Civil Engineering from a regionally accredited university in the United States. It is noted that the beneficiary's transcript does not indicate that he completed any computer courses during his civil engineering studies at the University of Aleppo.

The beneficiary's resume reflects the following work experience: From January 1980 to January 1981, the beneficiary worked as a civil engineer at the Directorate of Land Reclamation, Ministry of Irrigation. From May 1983 to May 1993, the beneficiary worked as Supervisor of Engineering at The General Company for Technical Studies and Consultation in Aleppo, Syria. From July 1993 to the date of filing of the petition, the beneficiary worked at the "Joint Engineering Office" as a Senior Engineer overseeing various civil engineering projects. It is noted that no documentation has been provided to corroborate any of the work experience claimed by the beneficiary on his resume such as employment verification letters from former employers. According to the beneficiary's

description of his job duties, none of his work experience has been in the IT field or has involved work as a software engineer.

The record further reflects that the beneficiary completed the following computer courses at Afaq Computer Center in Hassake Province, Syria:

- 1 From February 5, 2000 to April 10, 2000, the beneficiary completed a beginner level course in M.S. Dos and M.S. Windows.
2. From April 22, 2000 to August 28, 2000, the beneficiary completed an intermediate level course in M.S. Word, Excel, and Access.
3. From October 12, 2000 to January 27, 2001, the beneficiary completed a course in Engineering Drawing Auto CAD.
4. From January 2, 2001 to March 18, 2001 the beneficiary completed a course in Visual Basic.
5. From April 5, 2001 to July 20, 2001, the beneficiary completed a course in Construction Analysis and Design STAAD.

The petitioner has not provided a syllabus or any other documentation setting forth the content of the above-listed courses. Nor has the petitioner submitted any evidence to show that the beneficiary's education, computer training, and work experience are equivalent to a bachelor's degree in computer science, software engineering, or computer information systems 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.

Counsel stated in a letter dated August 8, 2001, that Pure Computing is in the process of developing software that can be used by civil engineers and construction engineers to design, simulate, and test their design before approval and blue printing of the final design. Counsel asserts that the beneficiary is uniquely qualified for this position since he is an experienced civil engineer. Counsel further stated:

[The beneficiary] has many years of experience in AUTO CAD to develop design schematic, Plus Windows, MS EXCEL spreadsheet, MS ACCESS, Word, Power Point, MS Dos and Visio. In addition, [the beneficiary] has experience in computer systems programming language[s] such as, Visual

Basic, C++, computer systems construction analysis and design STAAD. Thus, the beneficiary obtained computer language both in previous employment positions as well as from educational classes in computer specialties.

However, it must be pointed out that the beneficiary's computer training took place during the period from February 5, 2000, to July 20, 2001. His initial course was a beginner's course in the Dos and Windows operating systems. It is not clear how the beneficiary could have "many years of experience" in operating systems and programming languages when he did not take a beginner's course in Dos and Windows until February of the year 2000. Furthermore, as stated above, no documentation has been submitted to substantiate the work experience listed by the beneficiary in his resume, or that the beneficiary had the opportunity to use AUTO CAD, and the various other software applications and programming languages referenced by counsel. In view of the foregoing, it is concluded that the petitioner has not shown that the beneficiary has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Neither counsel nor the petitioner has submitted any evidence to demonstrate recognition of the beneficiary's expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation. No published material by or about the alien in professional publications, trade journals, or major newspapers has been submitted. Nor has any evidence been submitted to show that the beneficiary holds licensure or registration to practice the specialty occupation in a foreign country or that the beneficiary has membership in a recognized foreign or United States association or society in the specialty occupation.

Furthermore, neither counsel nor the petitioner has submitted any documentation from a recognized authority stating that the beneficiary has made significant contributions to the field of software engineering or indeed of civil engineering. While the beneficiary is clearly qualified to work as a civil engineer, the petitioner has not submitted sufficient documentation to establish that the beneficiary's educational, training, and employment background are equivalent to a second major in computer science, information science, or management information systems.

It is noted that counsel requests oral argument in this matter. A request for oral argument must set forth facts explaining why such argument is necessary to supplement the appeal. 8 C.F.R. 103.3(c). Oral argument is limited by regulation to cases involving unique facts or issues of law which cannot be adequately addressed in writing. The request fails to set forth facts explaining why such argument is necessary, and the request must therefore be denied.

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.