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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street, N.W.  
BCIS, AAO, 20 MASS, 3/F  
Washington, DC 20536



AUG 21 2009

File: LIN 01 261 51314 Office: NEBRASKA SERVICE CENTER Date:

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)

ON BEHALF OF PETITIONER:



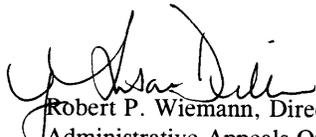
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an Illinois computer services company. It has two employees and an undisclosed gross annual income. It seeks to temporarily employ the beneficiary as a computer consultant for a period of three years. The director determined that the petitioner had not established the beneficiary was qualified to perform the duties of the position because the petition lacked an educational equivalency document.

On appeal, counsel requests additional time to submit an educational equivalency document and then submits the educational equivalency document.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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.

With regard to judging whether practical experience or specialized training is equivalent to the completion of a college degree, 8 C.F.R. § 214.2(h)(4)(iii)(D) states:

. . . equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following: provides four alternative criteria to establish such equivalency. The criteria are:

- (1) 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.
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association of society for the specialty that is known to grant certification or registration to persons in the

occupational specialty who have achieved a certain level of competence in the specialty;

(5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty.

If required by a specialty, the alien must hold a Doctorate degree or its foreign equivalent. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

(i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;

(ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

(iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;

(iv) Licensure or registration to practice the specialty occupation in a foreign country; or

(v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The issue in this proceeding is whether the petitioner has established that the beneficiary is qualified to perform the services of the proffered position. In the original petition received by the Nebraska Service Center on September 10, 2001, the petitioner submitted no documentation with regard to the beneficiary's academic credentials.

On November 1, 2001, the director requested further evidence with regard to the beneficiary's academic credentials. In particular, he requested copies of the beneficiary's college transcripts, and an educational equivalency evaluation of the beneficiary's academic credentials. The director stated that school records, diplomas, degrees, affidavits, contracts and similar documents could be submitted to establish period of attendance, courses of study and other pertinent data, executed by the person in charge of the records of an educational institution.

In response, the petitioner submitted transcripts of coursework at ATID College in Israel that covered grades and classes in 1999 and 2000. A statement from Hanan Yager, Dean of Pre-Engineering Studies, stated that the beneficiary had studied in the pre-engineering computer programming division and had completed his studies in 2000.

On February 20, 2002, the director denied the petition. The director stated that the Bureau had not received an educational equivalency evaluation with regard to the beneficiary's academic credentials. He also determined that the beneficiary did not possess a baccalaureate or higher degree or its equivalent, and was not qualified to perform services in a specialty occupation.

On appeal, the petitioner submitted a report from Evaluation Service, Inc. in Hopewell Junction, New York that stated the beneficiary has the equivalent of an associate of applied science degree in computer engineering technology awarded by a regionally accredited community/junior college in the United States. Although counsel states that copies of the beneficiary's education were also submitted, the educational equivalency evaluation is the only document found in the record.

Upon review of the record, the petitioner has not established that the beneficiary possesses a baccalaureate or higher degree or its equivalent. The educational equivalency document clearly establishes that the beneficiary studied for two years in Israel and then received an associate's degree in a computer engineering field. No further documentation or testimony is in the record with regard to any work experience, or additional training that could be found to be the equivalent of a baccalaureate degree. As stated by the statute and regulations, beneficiaries must possess a baccalaureate or higher degree or its equivalent in order to be qualified to perform the duties of 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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.