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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 Eye Street, NW  
Washington, D.C. 20536



FILE: EAC 02 070 51307 Office: VERMONT SERVICE CENTER Date: DEC 18 2003

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:



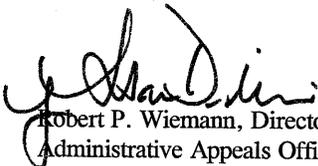
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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, Vermont Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a travel consolidator. It employs 32 people and has a gross annual income of \$17,000,000. It seeks to temporarily employ the beneficiary as a programmer analyst for a period of three years. The director determined that the petitioner had not established that the beneficiary is qualified for a specialty occupation.

On appeal, counsel asserts that the director erred in determining that the beneficiary is not qualified for a specialty occupation, as he possesses the equivalent of a bachelor's degree in computer science.

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 first issue to be considered is whether the beneficiary meets any of the criteria listed in 8 C.F.R. § 214.2(h)(4)(iii)(C). As the proffered position is a programmer analyst, the beneficiary

must possess a baccalaureate degree, or its equivalent, in computer science or management information systems.

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university.

The beneficiary holds a degree from Nairobi University in Nairobi, Kenya, and completed the requirements for a master's degree in mathematics from The City University in New York. The beneficiary does not meet this criterion.

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.

The proffered position is as a programmer analyst. The beneficiary's degree is in mathematics, which cannot be considered to be a degree required by this particular occupation.

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.

This occupation does not require a State license, registration, or certification.

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.

This is the only criterion that the beneficiary could possibly meet. In considering whether the beneficiary qualifies under this category by virtue of his education, practical experience, and/or specialized training, 8 C.F.R. § 214.2(h)(4)(iii)(D) states:

[E]quivalence 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:

(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 or 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. . . . 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 Trustforte Corporation, an academic advisory firm, submitted an academic equivalency evaluation that states that the beneficiary's undergraduate degree and his master's level coursework are the equivalent of a bachelor's degree in computer science. The director found that the beneficiary only took seven computer-programming courses during his academic career, and so did not accept the premise that the beneficiary had the equivalent of a degree in computer science. In reviewing the beneficiary's transcripts, however, it appears that the beneficiary has at least ten computer-related courses, as well as several others that might be considered to fall into that category. There is no evidence in the record that contradicts the evaluator's assessment of the beneficiary's educational background. Accordingly, the evaluation from The Trustforte Corporation establishes that the beneficiary is qualified to work in the proffered position. The director's objections to the approval of the petition have been overcome.

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 sustained that burden.

**ORDER:** The director's July 30, 2002 decision is overturned. The petition is approved.