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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: LIN-01-016-53162

Office: Nebraska Service Center

Date:

JAN - 8 2003

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 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 approved by the Director, Nebraska Service Center. Based upon information obtained from the beneficiary during his visa issuance process at the American Consulate, the director determined that the beneficiary was not clearly eligible for the benefit sought. Accordingly, the director properly moved to reopen the approval of the visa petition, stating his reasons therefore, and ultimately denied the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a computer consulting business with seven employees and an estimated gross annual income of \$690,000. It seeks to employ the beneficiary as a software engineer 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, counsel submits a brief.

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.

In a report dated February 28, 2001, a consular officer stated, in part, as follows:

[The beneficiary] is sadly underqualified to fulfill [a software engineer's] responsibilities for the following reasons:

\* [The beneficiary] informed interviewing Consular Officers that he had never used C or C++ and didn't know these programming languages.

\* In basic skills assessment tests, [the beneficiary] scored an abysmal 1/5 answers correct for Java and 2/5 answers correct for VB.

The results of this interview indicate that [the beneficiary] is not proficient in any of the computer languages required for this job and is not a genuine computer programmer.

On appeal, counsel states, in part, that the consular officer acted beyond the scope of his authority, and the director failed to adequately consider the additional evidence of the beneficiary's skills. Counsel further states that because of the American consulate's poor record-keeping practices (e.g., striking through the typed file number and writing it by hand on its transmittal letter to the director), the results of the beneficiary's interview may actually belong to another candidate with a similar name.

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 record contains, in part, the following:

- \* A bachelor of engineering degree in computer technology conferred by an Indian institution;
- \* Numerous computer training certificates;

- \* Letter dated June 30, 2000, from the director of the Indian company, E-Forum, certifying that since October 1, 1998, the beneficiary had worked as a trainee programmer, senior programmer, and, ultimately, team leader;
- \* Letter dated July 1, 2001, from the human relations director of the Indian company, Concretioindia, certifying that since July 1, 2000, the beneficiary has worked as an operations director, responsible for managing 25 software developers;
- \* Contract dated May 18, 2001, between the beneficiary representing the Indian company, Concretioindia, and U.S. company, Syngress Publishing;
- \* Affidavit dated January 11, 2002, in which the beneficiary declares, in part, that he told the consular officer that he has worked previously worked with the computer programming languages, C and C++.

A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, at page 170, finds that most employers prefer to hire individuals who have at least a bachelor's degree and broad knowledge and experience with computer systems and technologies. Usual degree concentrations for applications software engineers are computer science or software engineering; for systems software engineers, usual concentrations are computer science or computer information systems. In this case, the beneficiary holds a bachelor of engineering degree in computer technology conferred by an Indian institution. The record further indicates that the beneficiary has computer-related employment experience. The report by the consular officer has been carefully reviewed. There is nothing in the report, however, indicating that any of the above listed documentation pertaining to the beneficiary's qualifications is inaccurate or fraudulent. Furthermore, the conclusions of the consular officer are not supported by any evidence. In view of the foregoing, it is concluded that the petitioner has shown that the beneficiary is qualified to perform the duties of the proffered position.

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. Accordingly, the appeal will be sustained and the petition will be approved.

**ORDER:** The appeal is sustained. The director's order is withdrawn and the petition is approved.