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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: EAC-01-221-52058 Office: Vermont Service Center

Date:

JAN 14 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 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 a start-up software consulting company with a projected total of six to eight employees and a projected gross annual income of \$500,000. It seeks to employ the beneficiary as a programmer analyst for a period of three years. The director determined the petitioner had not shown that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

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 director denied the petition because the petitioner had failed to establish that the beneficiary's foreign education, computer training, and work experience are equivalent to a bachelor's degree in computer science, information science, or management information systems.

On appeal, counsel asserts that the petitioner has submitted sufficient documentation to show that the beneficiary qualifies to perform services in the proffered position of programmer analyst based on her foreign education and work experience. In support of his assertion, counsel submits a new evaluation of the beneficiary's foreign education and work experience.

The proffered position is that of a programmer analyst. A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, finds that the usual requirement for employment as a systems analyst, programmer analyst, or database administrator is a baccalaureate degree in computer science, information science, or management information systems.

The record shows that the beneficiary was awarded a diploma in Horological Engineering after completion of a 3-year program at the Polytechnic Institute for Horological Engineering in Bangalore, India. A review of the beneficiary's transcripts reveals that, although the beneficiary took classes in machine drawing and engineering drawing, she does not appear to have undertaken any courses directly related to computer programming during her studies at that institute.

The beneficiary was subsequently awarded two "certificates of excellence" from computer training institutes in India: one for completion of training in C, C++, and Visual Basic; and one for completion of training in DOS, Wordstar, and Basic.

The record further shows that, although the beneficiary had eight years of general work experience at the time of filing of the petition, she had only one year of experience as a computer programmer from September 1999 to September 2000.

The record contains two evaluations of the beneficiary's credentials. The first evaluation was performed by a committee composed of three university professors: [REDACTED] Ph.D., of Columbia University; [REDACTED] M.S., of Clarion University; and [REDACTED] M.A., of Central Michigan University. This committee found the beneficiary's foreign education and work experience equivalent to a Bachelor of Science degree in Information Technology from any accredited university in the United States or Canada.

On appeal, counsel submits a new credentials evaluation from [REDACTED] a credentials evaluator for International Evaluation and Translation Services. [REDACTED] finds the beneficiary's engineering diploma equivalent to three years of academic study toward a Bachelor of Science degree in Engineering from an accredited institution of tertiary education in the United States. He further finds the beneficiary's foreign education and work experience equivalent to a Bachelor of Science degree in Engineering and Computer Science from an accredited institution of tertiary education in the United States.

The 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 this case, it is noted that none of the committee members who performed the initial evaluation has provided a curriculum vitae setting forth his eligibility to make a determination as to the U.S. equivalence of an alien's foreign education and/or work experience. Furthermore, the initial evaluation committee found the beneficiary's "educational qualifications" equivalent to a bachelor's degree in information technology without providing any explanation as to how such determination was made. It is further noted that [REDACTED] did not make any mention of the beneficiary's computer certifications in making his evaluations of the beneficiary's education and work experience. Additionally, the record does not contain any evidence to corroborate the findings of either the initial committee or [REDACTED] 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 as required by 8 C.F.R. 214.2(h)(4)(iii)(D)(1). Therefore, the evaluations performed by the initial committee and by [REDACTED] are accorded little weight.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(D)(5), the Service may determine that equivalence to completion of a baccalaureate degree in a 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 for expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree, 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, 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.

In this case, the beneficiary had only one year of relevant work experience as a computer programmer at the time of filing of the petition. The employment letter from the beneficiary's former employer, Temaco, does not provide sufficient information to make a determination as to whether the beneficiary's work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation or that her experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. While the record contains two "certificates of excellence" awarded to the beneficiary by computer training institutions in India, the record does not contain any description of the specific courses of study, the level of practical training, or the total number of hours of the programs that the beneficiary undertook to receive such certifications.

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specific specialty. The record contains no evidence that the beneficiary

holds a state license, registration, or certification which authorizes her to practice a specialty occupation in a foreign country. The record does not contain any published material by or about the alien in professional publications, trade journals, or major newspapers. No evidence has been submitted to document any achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary's foreign education and work experience are equivalent to a baccalaureate degree in computer science, information science, or management information systems.

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.