



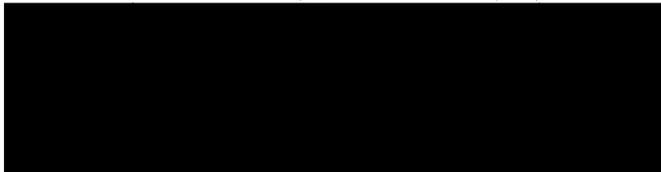
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U.S. Department of Justice  
Immigration and Naturalization Service

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



File: EAC-01-047-53157 Office: Vermont Service Center Date:

JAN 21 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: SELF-REPRESENTED

**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, Vermont Service Center. Based upon information obtained from the beneficiary during his visa issuance process at the United States Consulate, Mumbai, India, the director determined that the beneficiary was not clearly eligible for the benefit sought. Accordingly, the director properly served the petitioner with a notice of intent to revoke approval of the visa petition and the reasons therefore, and ultimately revoked the approval of the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a business involved in computer training, consulting, and web design with two employees and a stated gross annual income of \$200,000. It seeks to employ the beneficiary as a business analyst for a period of three years. The director determined the petitioner had not established that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, the petitioner's president submits a statement 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.

In a report dated April 23, 2001, an officer from the American Consulate in Mumbai, India states in part that during his interview, the beneficiary admitted having never worked on hardware repair, programming, or software development. The report also mentions the fact that the beneficiary was not familiar with, and did not possess knowledge of terms associated with the use and applications of computers. The conclusion of the report is that the

beneficiary does not appear to be qualified to perform the proposed job duties of the proffered position.

On appeal, the petitioner's president argues that the beneficiary holds the equivalent of a bachelor's degree in business administration and has attained certifications in three different Microsoft specialties. The petitioner asserts that the beneficiary has also received additional specialized training as a network analyst.

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.

In a separate letter that accompanied the initial I-129 petition, the petitioner described the duties of the proffered position as follows:

1. Analyze, design and architect financial management systems;
2. Designs systems to facilitate the intra-company and data relating to financial accounting, sales, marketing and other areas;

3. Identify the tools and technologies that are needed to successfully set-up an Electronic Commerce site; [and]
4. Design new information technology architectures and manage pilot projects for financial systems.

The duties of the offered position parallel those of a systems analyst. A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, at pages 180-183, finds that the usual requirement for employment as a systems analyst, computer scientist, or database administrator is a baccalaureate degree in computer science, information science, or management information systems.

The record shows that the beneficiary holds a bachelor of commerce degree from the Maharaja Sayajirao University of Baroda, India. It is noted that a review of the beneficiary's class transcripts from this institution provides no indication that he took any classes related to the study of computers to receive this degree in commerce. The record indicates that the beneficiary also had approximately four and one-half years of employment in two different business administration positions at the time of the filing of the present petition. A credentials evaluation service found the combination of the beneficiary's foreign education and work experience equivalent to a bachelor of business administration degree as awarded at an institution of higher learning in the United States. Clearly, the beneficiary's degree equivalent is not in any of the enumerated specific specialties listed in the Handbook as the usual requirement for employment as a systems analyst. Accordingly, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in the offered job based upon a combination of his education and work experience.

The petitioner's president argues that the beneficiary has attained certifications in three different Microsoft specialties. While the record contains documentation indicating that the beneficiary has passed six different component tests within the Microsoft Certified Professional Program, the record contains no evidence that he has fully completed this program and received the claimed certifications. The petitioner's president asserts that the beneficiary has also received additional specialized training as a network analyst. However, the record contains no evidence to support this assertion. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in this proceeding. Matter of Treasure Craft of California, 14 I. & N. Dec. 190 (Reg. Comm. 1972).

On appeal, the petitioner's president states that the environment was noisy and the beneficiary uneasy at the time of his interview with the consular officer. However, this explanation is not

sufficient to overcome the fact that the beneficiary admitted having never worked on hardware repair, programming, or software development. In addition, the statements of the petitioner's president cannot explain the beneficiary's lack of knowledge and familiarity with terms commonly utilized in the use and applications of computers.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. Matter of Ho, 19 I. & N. Dec. 582 (Comm. 1988).

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specialized area. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes her to practice a specialty occupation. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in the 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 decision of the director will not be disturbed.

**ORDER:** The appeal is dismissed.