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

DA

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



File: LIN 02 008 53091 Office: NEBRASKA SERVICE CENTER Date: JUN 18 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)

ON BEHALF OF PETITIONER:



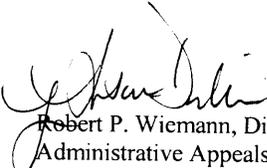
INSTRUCTIONS:

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 petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office ("AAO") remanded the matter for further consideration and action. The director subsequently denied the petition again and certified his decision to the AAO for review. The decision of the director will be affirmed. The petition will be denied.

The petitioner is an information technology company providing consulting, research, analysis, solution development, and technical support services for business applications software. It employs 10 to 12 persons and has a projected gross annual income of \$20 million. The petitioner seeks to employ the beneficiary as its senior vice president and chief development officer for a period of three years. The director denied the petition finding that the petitioner had not shown that the beneficiary qualifies to perform services in the specialty occupation.

On notice of certification, counsel submits a brief and additional evidence.

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 the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

The director found the evidence of record insufficient to demonstrate that the beneficiary qualifies to perform the duties of the position in question and issued a notice dated January 29, 2003 requesting that the petitioner submit additional evidence in support of the petition.

On April 2, 2003, the director noted that the petitioner had failed to respond to the request for additional evidence ("RFE") and denied the petition finding that the record of proceeding did

not contain sufficient evidence to show that the beneficiary qualifies to perform services in the specialty occupation.

In his response to the notice of certification, counsel stated that the petitioner did in fact respond to the RFE. In support of his statement, counsel submitted a copy of his response to the RFE and a letter from Federal Express stating that the petitioner's response was delivered to the Nebraska Service Center on February 25, 2003. As the petitioner has shown that it did respond to the RFE in a timely manner, the material submitted in response to the RFE will be addressed in this decision.

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 proffered position appears to combine the duties of a computer and information systems manager with those of a top executive. A review of the Department of Labor's *Occupational Outlook Handbook*, (*Handbook*), 2002-2003 edition at pages 35-37, finds that the usual requirement for employment as a computer and information systems manager is a bachelor's degree in a related field. A master's

degree is preferred, especially a master of business administration degree with technology as a core component.

The record shows that the beneficiary was awarded a Bachelor of Applied Science degree in Geological Engineering by the University of Waterloo in Canada. A credentials evaluator found the beneficiary's degree equivalent to a bachelor's degree in geological engineering from a regionally accredited institution in the United States. The evaluation appears reasonable and will be accepted.

Clearly, the beneficiary qualifies to perform services in the specialty occupation of geological engineer. The question to be determined in this proceeding is whether the petitioner has submitted sufficient evidence to show that the beneficiary qualifies to perform the duties of the position in question.

The beneficiary holds the equivalent of a bachelor's degree in geological engineering, a specialty not directly related to business administration, computer science, or management information systems. The beneficiary does not have a master's degree in business administration with technology as a core component. Additionally, there is no evidence in the record that the beneficiary holds an unrestricted State license, registration, or certification which authorizes him to fully practice the specialty occupation in the United States.

In his response to the RFE, counsel asserted that the beneficiary is qualified for the position by virtue of his degree and experience. In support of his assertion, counsel submitted a letter from [REDACTED], Chief Executive Officer of Intellidat. Ms. [REDACTED] stated:

Mr. [REDACTED] is one of the founders of our company. He helped us develop our core products, which are programs and services involving database solutions for massive dense data. We are currently marketing these solutions in Canada and in the United States. Mr. [REDACTED] has used his programming and software development expertise to develop these database solutions. Mr. [REDACTED] is an inventor of two pending patents which represent our core technology. Mr. [REDACTED] initially developed the necessary technical and management skills to perform these duties through the coursework in his undergraduate program and his previous

experience. He has also developed through his experience with this company administrative and executive abilities that make him able to perform the duties of the job being offered him.

Ms. [REDACTED] provided the following summary of the beneficiary's work experience:

1. From January 1993 to August 1993, he worked for Conestoga-Rovers and Associates as a Junior Engineer. In that position, he evaluated and recommended new technologies for waste remediation and managed contracts and budgets for multi-year, multi-million dollar contractors.
2. From September 1994 to March of 1996 the beneficiary performed services for Fisher, Leff & Associates. In that position, he helped rebuild an environmental consultancy and was instrumental in increasing its revenues by \$750,000. He also recruited a management team.
3. In 1996, the beneficiary founded an environmental management consultancy, Innovative Management Solutions. He created programs that linked specialty manufacturers to purchasers on-line. He managed and delivered over 50 contracts for high technology companies and for the government. The beneficiary turned the consultancy over to his partners to help co-found Intellidat, Canada.
4. Since 1998, the beneficiary has served as Vice President of Operations of Intellidat, Canada. In addition to helping develop Intellidat's core product, the beneficiary helped the company partner with IBM to bring its technology to the market. He also built and supervised a management and technical team, and developed business plans, financial models and strategy documents.

The petitioner has not submitted evidence to show that the beneficiary's degree in geological engineering and work experience qualify him to perform the duties of a top executive or a computer and information systems manager such as 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).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the Bureau 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.

Although the director specifically requested that the petitioner provide evidence to show the beneficiary qualifies to perform the duties of the position, the petitioner has not provided any independent evidence to document the beneficiary's work experience for Conestoga-Rovers & Associates or Fisher, Leff & Associates. It is noted that there is an apparent gap in the beneficiary's employment history from August 1993 to September 1994. Ms.

██████████ did not provide any explanation for this gap in the beneficiary's employment history. Furthermore, although Ms. ██████████ stated that the beneficiary co-founded Intellidat and was the inventor of the company's core technology, for which she indicated the beneficiary had two patents pending, she did not provide any independent evidence to corroborate these statements. Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Additionally, it was held in *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988) and *Matter of Ramirez-Sanchez*, 17 I&N Dec. (BIA 1980) that the assertions of counsel do not constitute evidence.

The record does not contain any evidence to demonstrate recognition of the beneficiary's expertise in the specialty occupation by recognized authorities in the same specialty occupation, nor does the record contain any evidence to show that the beneficiary holds membership in a recognized foreign or United States association or society in the specialty occupation. The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specific specialty. Furthermore, the petitioner has not submitted any evidence to show that the beneficiary holds licensure or registration to practice the specialty occupation in a foreign country. Additionally, the record does not contain any published material by or about the alien in professional publications, trade journals, or major newspapers. Finally, no evidence has been submitted to document any achievements that a recognized authority has determined to be significant contributions to the field. In view of the foregoing, it is concluded the petitioner has not submitted sufficient evidence to demonstrate that the beneficiary qualifies to perform the duties of the position in question.

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.

ORDER: The appeal is dismissed.