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U.S. Department of Homeland Security

Citizenship and Immigration Services

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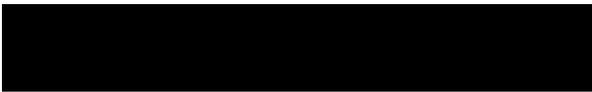
**DD**  
ADMINISTRATIVE APPEALS OFFICE  
CIS, FEDERAL BLDG MASS, 3/F  
425 I Street, N.W.  
Washington, DC 20536



**NOV 07 2003**

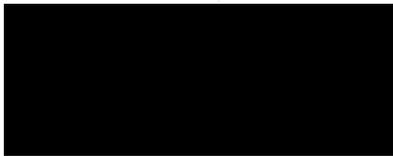
File: EAC 02 039 53994 Office: VERMONT SERVICE CENTER Date:

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 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 dismissed.

The petitioner is a software consultancy company. It has eleven employees and a gross annual income of \$1,000,000. It seeks to temporarily employ the beneficiary as a software engineer for a period of three years. The director determined that the beneficiary was not qualified to perform the duties of the proffered position.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS) based its denial on an overly strict reading of the Department of Labor's *Occupational Outlook Handbook (Handbook)*. Counsel submits additional documentation.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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.

With regard to judging whether practical experience or specialized training is equivalent to the completion of a college degree, 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 of 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. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. If required by a specialty, the alien must hold a Doctorate degree or its foreign equivalent. 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 issue in this proceeding is whether the petitioner has established that the beneficiary is qualified to perform the duties of the proffered position. In the original petition received by the Vermont Service Center on November 16, 2001, the petitioner submitted the following documentation with regard to the beneficiary's qualifications to perform the duties of the proffered position:

- o An evaluation of the academic credentials, specialized training and progressively responsible experience of the beneficiary by M. Sambandham, Multinational Evaluation and Translation Services, Inc. In this evaluation, Dr. Sambandham stated that, based on the beneficiary's academic studies and professional experience, he had the equivalent of a bachelor of science degree in mathematics and computer science from an accredited university in the United States.
- o A document from the Faculty of Physical sciences, Nagarjuna University, that stated the beneficiary had passed the examination for the degree of bachelor of science with major subjects listed in Part II of the beneficiary's studies as mathematics, physics, and statistics.
- o A document entitled "Pass Certificate-Cum-Memorandum of Marks" from the Board of Intermediate Education in Andhra Pradesh, Hyderabad, India.
- o A document entitled Secondary School Certificate that stated the beneficiary passed the examination for secondary school in March of 1986.
- o A document entitled "Provisional National Trade Certificate" issued by the Government of Andhra Pradesh, Department of Employment and Training. This document indicated that the beneficiary attended training from August 1995 to July of 1996 in the trade identified as D.P. Y C.S. and that he passed the trade test in July of 1996.
- o A training certificate from VETRI Software, India, Ltd. This document indicated that the beneficiary had completed a Y2K training program in May of 1997. The length of this training was not specified.
- o A training certificate from BOSS etc. This document stated that the beneficiary had completed the requirement of a course called "Clearing

Beginning/Data Modelling Clear Support/Web Support" in 1999. The length of training was not specified.

- o The beneficiary's resume.

The beneficiary's resume contained the following breakdown of his job positions from June of 1994 to May of 2001:

May 2000 to May 2001, Broadband Office Inc. Virginia, System Administrator/Lead

September 1999 to March 2000, Celera Genomic Corporation, Maryland, System Administrator/Lead

August 1998 to August 1999, Level-3 Communications, Colorado, Sr. Programmer/Functional Analyst

February 1998 to July 1998, American Express, Arizona, Senior Programmer/Analyst

January 1997 to November 1997, Vetri Software Limited, India, Sr. Programmer/Analyst

March 1995 to December 1996, Vetri Software Limited, India, Programmer/Analyst

June 1994 to February 1995, Loyola Academy, India, Programmer/Analyst

On November 29, 2001, the director asked for further information with regard to the beneficiary's qualifications to perform the duties of the position. In particular, the director requested more information with regard to the duration of training courses, along with the time for each training course. The director also wanted more documentation that VETRI Software India, Ltd. and BOSS etc. were accredited baccalaureate-level institutions in India that offered curricula approved by the Association of Indian Universities. The director also stated that, if the petitioner wanted to establish that the beneficiary was qualified to perform services through a combination of education, specialized training and/or work experience, it needed to submit an evaluation from an official who has the authority to grant college-level credit in the profession at an accredited school that has a program for granting such credit based on an individual's training or work. Finally the director gave the petitioner an alternative route for establishing that the proffered position was a specialty occupation by meeting any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

In response, the petitioner submitted a credentials evaluation statement from the Washington Evaluation Service, in Washington, D.C. In the document, Dr. Terry Erb stated that the beneficiary's combined academic studies and over seven years of professional work experience were the equivalent of three years of study toward a bachelor of science in mathematics, physics, and

chemistry at an accredited U.S. university. Dr. Erb added that the beneficiary's educational background combined with his over seven years of progressively more complex employment experiences was also the equivalent of a bachelor of science degree with a second major in computer science as awarded by an accredited U.S. university.

Finally, the petitioner submitted two letters of employment verification for the beneficiary. The first letter verified that the beneficiary worked for Primesoft as a programmer/system administrator from April of 1998 to December of 2000. In the letter, the beneficiary's duties were listed as programming as well as system administration in CLARIFY, Visual Basic, Oracle, PL/SQL, SQL Server, Crystal Reports, mainframes, UNIX, Windows 98/2000/NT, internet technologies and system development life cycle. The second letter was written by Michael Smith, who stated he worked with the beneficiary at Broadband Office, Inc. Mr. Smith stated he was a project manager while the beneficiary worked there as a systems administrator from January 2001 to May of 2001. Mr. Smith stated that as systems administrator, the beneficiary was responsible for the installation, configuration, and administration of CRM (Customer Relation Management) Clarify applications. Mr. Smith stated that the beneficiary was also responsible for the Clarify System Development Life Cycle, and worked with Reports, Tuxedo, Oracle, PL/SQL, Sun Solaris 2.6, Win ME/2000, Query Anything, and PVCS Version Controller. According to Mr. Smith, the beneficiary also provided post-production support to on-site customers and remote field operations staff. Mr. Smith finally stated that the duties the beneficiary performed as system administrator made him ideally suited for a position as software engineer/applications administrator with the petitioner.

On December 18, 2001, the director denied the petition. The director noted that the beneficiary did not possess the equivalent of a U.S. bachelor of science since he had completed only three years of baccalaureate-level studies in India. In addition the director stated that the beneficiary's studies in mathematics, statistics, and physics and his work experience were not found equivalent to a computer science major or related field at an accredited baccalaureate-level institution in the United States. In addition, the director stated that the petitioner had not provided evidence that the beneficiary's previous work experience involved progressively more responsible positions and the theoretical and practical application of highly specialized software design or development. The director noted that the two letters provided by the former employers or work colleagues failed to establish the specific day-to-day duties performed by the beneficiary, the highly specialized knowledge acquired by the beneficiary while he was employed with these companies and the professional and educational credentials of the beneficiary's peers, supervisors and/or subordinates.

On appeal, counsel states that the petitioner did not contend that the beneficiary gained his theoretical and practical application of highly specialized computer programming solely from his baccalaureate studies and that the petitioner also took into account the beneficiary's six years of directly related work experience.

To clarify the nature of the beneficiary's day-to day duties, counsel submits two new letters from Primesoft and Dominion Telecom, two U.S. companies; however, the two letters submitted are identical to the correspondence the petitioner submitted after the director requested further evidence. Counsel does submit a third letter from R. Venkateswara Rao, project manager, Siri Technologies, India. This letter states that the beneficiary was trained and employed by the company as a junior programmer/analyst from September 1993 to July 1995. The beneficiary's work responsibilities are described as "analyzing, designing, developing, and debugging of COBOL programs, generating reports as per requirements and documenting the structural flow." The SIRI letter also added that the position offered for junior programmers/analysts required knowledge in COBOL, Oracle, Windows and DOS.

Counsel also submits for the record a second educational and work evaluation from Dr. Sambandham, which states that the beneficiary has six years of progressively responsible work experience. According to Dr. Sambandham, the first three years of the beneficiary's work experience are the equivalent of one year of academic studies, and this additional year of studies would equate to a baccalaureate degree in computer science. The evaluator then states that the next three years of work experience would give the beneficiary a specialization in computer science.

Citizenship and Immigration Services uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 820 (Comm. 1988). With regard to Dr. Sambandham's evaluations, it is not clear why the evaluator only found three years of work experience in his first evaluation and then found six years of work experience in his second evaluation. In addition, in the second evaluation, Dr. Sambandham mentions new employers of the beneficiary such as Regency Computers and Dominion Telecom. It should be noted that the beneficiary's resume does not reflect any employment by Regency Computers or Dominion Telecom. Dr. Sambandham's second evaluation provides no further documentation to corroborate these additional job positions. It is incumbent upon 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, 591-92 (BIA 1988). Without more persuasive testimony to correct

this discrepancy, the two evaluations provided by Dr. Sambandham are given no weight in this proceeding.

With regard to Dr. Erb's education and work experience evaluation, Dr. Erb states initially in his evaluation that the beneficiary's combined academic studies and over seven years professional work experience are equivalent to three years of study toward a bachelor of science in mathematics, physics, and chemistry; however, no evidence on the record substantiates any coursework undertaken by the beneficiary in the field of chemistry. In addition, Dr. Erb further states that the beneficiary's work experience included the theoretical and practical application of specialized knowledge required of the occupation, and that the beneficiary had professional standing and recognition as a professional in his field. Both issues are material to this proceeding. However, Dr. Erb provides no references to any particular documentation to establish either assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without more persuasive evidence, the evaluation submitted by Dr. Erb is given no weight in this proceeding.

In addition, neither evaluation meets the regulatory criteria outlined in C.F.R. § 214.2(h)(4)(iii)(D)(1). Both evaluations submitted by the petitioner evaluated the beneficiary's three year program of university studies and his work experiences in reaching a conclusion that the beneficiary had the equivalent of a U.S. bachelor's degree in computer science or a baccalaureate degree in mathematics with a double major in computer sciences. While both the Washington Evaluation Service and the Multinational Evaluation & Translation Services, Inc., appear to be qualified to evaluate the beneficiary's foreign academic studies and their equivalency to similar courses offered at accredited U.S. universities, neither group has the authority to grant college level credit for the beneficiary's training or work experience. To date, the petitioner has submitted no evaluation of the beneficiary's educational background in combination with his employment experience, 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. Without more persuasive evidence, the criterion outlined in C.F.R. § 214.2(h)(4)(iii)(D)(1) cannot be met.

Furthermore, the regulatory criterion outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) is used only to evaluate the education of the beneficiary, not his work experiences. (Emphasis added.) Upon a review of the materials placed on the record for the instant petition, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) is the only regulatory criterion relevant to the evaluation of the beneficiary's work experience and its equivalency to a baccalaureate degree.

Pursuant to 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5), with regard to whether the beneficiary has acquired the equivalent of a baccalaureate degree in computer science through a combination of education, specialized training, and/or work experience in areas related to the specialty, the petitioner has provided the beneficiary's resume; his academic records from high school and university; and documentation of training in computer sciences that the beneficiary received in India from both a government-sponsored training program and from in-house training provided by employers.

Upon examination of the documentary evidence submitted by the petitioner, this evidence is not viewed as substantive for fulfilling the criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5). First, it should be noted that the beneficiary's resume states the following for his university studies: "B[achelor of] S[cience] in [c]omputer [s]ciences, Andhra Loyola College, Andhra Pradesh, India." This statement is not supported by the beneficiary's transcript from Andhra Loyola College and the petitioner provides no clarification or explanation for such a statement. Such a statement casts a pall of doubt as to the veracity of the remaining information on the beneficiary's resume. For purposes of examining the documentary evidence submitted by the petitioner as it applies to 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5), the beneficiary's resume is given no weight.

With regard to the training documentation, this documentary evidence also is found insufficient. First, there is no explanation on the record as to the actual coursework in computer science received during the one-year training program from the government of the State of Andhra Pradesh. Second, there is no explanation of the level of such training. The provisional National Trade certificate only identifies subjects such as practical, trade theory, workshop calculation and science, engineering drawing and social studies. In addition, only grades for practical trade theory and social studies are identified on the certificate. Third, there is no information given with regard to the BOSS etc. or VETRI Software, Inc., certificates concerning the length of the training. Given the fact that the beneficiary's university transcript reflects no specific coursework in computer science or computer applications, further clarification of the beneficiary's subsequent training in Andhra Pradesh and in the other training courses provided by the beneficiary's employers could have provided significant weight in this proceeding. Without more persuasive evidence, the petitioner has not established that the beneficiary's training after his university studies would be the equivalent of another year of university level studies in computer science.

With regard to 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5)(i), the petitioner submitted three letters from the beneficiary's former employers or work colleagues. None of the letters document any recognition of expertise, nor do they document any achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation. While the

letter from Michael Smith of Dominion Telecom states that the beneficiary would be "ideally suited" for the petitioner's job position, this statement is not sufficient to establish the regulatory criterion outlined in 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5)(i). With regard to evidence as to any significant contributions that the beneficiary may have made in his field, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(v), the petitioner provided no such documentation. While former employers, the two evaluators, and work colleagues listed various program languages and systems in which the beneficiary has worked, none of the evidence presented by the petitioner describes any significant contributions that the beneficiary has made in his field.

With regard to the documentation of progressively responsible work experience, the record is confused. For example, the petitioner submitted the beneficiary's resume and three letters from former work colleagues and employers. As previously stated, the beneficiary's resume is given no weight in this proceeding. The remaining documentation consists of the letter from a project manager at SIRI Technologies and the two letters from Primesoft and from Michael Smith at Dominion Telecom. The letter from SIRI Technologies states that the beneficiary worked as a junior programmer/analyst from September 1993 to July 1995; however, this position is not listed on the beneficiary's resume, and, as previously stated, the beneficiary's resume is given no weight in this proceeding. Although counsel states on appeal that it is submitting letters from these two companies with more information on the beneficiary's duties, no new letters from either company are found in the record. Therefore only the two original letters are examined in this proceeding with regard to progressively responsible experience.

The letter from Primesoft's Department of Human Resources states that the beneficiary worked as a programmer/system administrator from April 1998 to December 2000, and the letter from Michael Smith states the beneficiary worked as a systems administrator at Broadband Office, Inc., from January 2001 to May 2001. The record therefore reflects that based on the beneficiary's job titles and minimal job description, the beneficiary performed essentially the same duties at both Primesoft and Broadband Office, Inc. Without more persuasive evidence, the petitioner has not established that the beneficiary has worked in progressively responsible positions.

With regard to establishing that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation, the petitioner also has not presented sufficient evidence. While the letter from Michael Smith states that he was the project manager at Broadband Office, Inc., he provides no information or documentary evidence as to his academic credentials to establish this criterion. In addition, this single letter is insufficient to establish that the beneficiary gained his experience while working with peers, supervisors, or subordinates who had a degree or its equivalent in the specialty occupation. The record is devoid of any

information with regard to the academic degrees of any other of the beneficiary's work colleagues during any point in his work experience. Without more persuasive evidence, the petitioner has not established this part of the 8 C.F.R. § 214.2 (h)(4)(iii)(D)(5) criteria.

In sum, the petitioner has not established any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D). Accordingly, the petitioner has not established 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 not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.