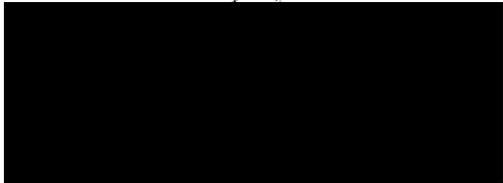


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U.S. Department of Homeland Security  
Citizenship and Immigration Services

**PUBLIC COPY**

ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 I Street, N.W.  
Washington, DC 20536



FILE: WAC-02-087-51345 OFFICE: CALIFORNIA SERVICE CENTER

DATE:

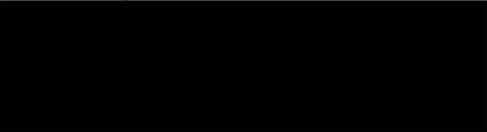
IN RE: Petitioner:  
Beneficiary:



NOV 24 2003

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:



Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

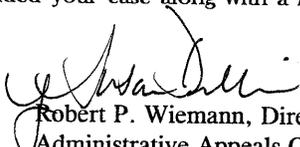
INSTRUCTIONS:

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 Director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner provides computer software services and it employs 14 persons and has a gross annual income of \$3 million. It seeks to employ the beneficiary as a computer systems analyst. The director denied the petition because the petitioner failed to establish that the beneficiary was qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief and additional evidence. Counsel states, in part, that the beneficiary is qualified to perform the duties of a specialty occupation.

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

The issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
  - (ii) 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence 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 or 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.

In the initial petition, the duties of the offered position were delineated as designing, developing, debugging, performing unit test programs for commercial business applications involving UNIX systems and MS oriented computer systems, preparing user documents, conducting user training, maintaining department and/or organization systems, and providing consultation services to end users at client work sites.

The letter accompanying the I-129 petition explained the beneficiary's qualifications. It reported that the beneficiary possessed a bachelor's degree in mechanical engineering in which he studied mathematics, applied mathematics, electric and electronic engineering, automotive systems engineering, and engineering courses for computer engineering. The letter further described the beneficiary as having more than seven years of experience in the field and as being fluent in the Japanese and English languages. The letter stated that the position required the candidate to be fluent in the two languages.

The petitioner had submitted the following documents regarding the beneficiary: Form IAP-66, certificates from Hosei University, and a document from the International Education Research Foundation that stated the beneficiary has the equivalent of a U.S. bachelor's degree in mechanical engineer.

On March 4, 2002, the director requested additional evidence: a description of the petitioning entity; a detailed description of the offered position; an explanation of why the position required the services of a person holding a bachelor's degree or its equivalent in the occupational field; evidence that the beneficiary had the education, specialized training, and/or progressively responsible experience equivalent to completion of a baccalaureate or higher degree in the specialty occupation; and evidence that the beneficiary had recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. The director requested that the beneficiary's employment/experience letters be on company letterhead, specify the dates of his employment, describe in detail the duties performed by the beneficiary, and state whether the experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in a specialty occupation. The director stated that, for purposes of determining equivalency to a bachelor's degree in the specialty,

three years of specialized training and/or work experience must be demonstrated for each year of college-level training that the beneficiary lacks.

In response, the petitioner submitted: a letter from its counsel; copies of pages from the Internet describing its company; a customer list; organizational charts for companies in the United States and Japan; the beneficiary's university certificate; an unsigned employment verification letter and its translation; and a copy of an Internet page about Fujitsu, the beneficiary's former employer.

On July 26, 2002, the director denied the petition, finding that the beneficiary was not qualified to perform the duties of the offered position: he didn't possess a bachelor's degree in computer science or a related field, he held a degree in mechanical engineering that an unnamed evaluator alleged was equivalent to a bachelor's degree in mechanical engineering, and his certificate didn't show university-level credit in computer science courses.

The director explained that under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) the Immigration and Naturalization Service (the Service), now Citizenship and Immigration Services (CIS), is authorized to determine whether the beneficiary has the equivalent of a bachelor's degree through a combination of education, specialized training, and/or work experience and stated that the petitioner sought degree equivalency under 8 C.F.R. § 214.2(h)(4)(iii)(D) because counsel stated that, based on the beneficiary's seven years of experience and his bachelor's degree, he qualified for the offered position.

The director stated that the petitioner did not submit employment or experience letters that substantiated counsel's claim and that the petitioner did not show that the beneficiary had recognition of expertise in the specialty through progressively responsible positions directly related to the specialty while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty. The director reported that the unsigned verification resembled a resume rather than a letter, because it listed only dates and places of employment, and that a resume is not evidence of employment because it does not affirm the beneficiary has recognition of expertise in the specialty through progressively responsible positions that are directly related to the specialty while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty.

On appeal, counsel submits the following evidence: (1) an educational evaluation from the Foundation of International Services, dated September 3, 2002, stating that the beneficiary has the equivalent of a bachelor's degree in mechanical

engineering from an accredited college or university in the United States, and has, according to the opinion letter from Dr. Hearne of Seattle Pacific University, as a result of his formal education and work experience, an educational background the equivalent of an individual with a bachelor's degree in computer information systems in the United States; (2) a letter, dated September 1, 2002, from Dr. James Hearne, Associate Professor, Computer Science Department, Western Washington University, stating that the beneficiary's experience and training equates to a bachelor's degree in computer information systems; (3) Dr. Hearne's curriculum vitae; (4) a letter from the Acting Dean, College of Arts and Sciences, Western Washington College, Bellingham, Washington, stating that its faculty have the authority to grant college level credit for training and experience, both in their areas of training and more generally in those foundational areas of university education commonly considered general education, "distribution requirements," or "related instruction in communication, computation and human relations," and the letter states that Western Washington University is a regionally accredited university; and (5) a letter, dated August 19, 2002, and signed by Yoshikazu Kitaoka, Manager of East-Japan Systems Engineering Division, Fijitsu.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D) describes the methods that a petitioner can use to establish that the beneficiary has the equivalent of a bachelor's degree. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) provides that 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 as a program for granting such credit based on a person's training and/or work experience can be submitted to establish that the beneficiary has the equivalent of a bachelor's degree.

Upon review of the record in this proceeding, the petitioner has established that the beneficiary has the equivalent of a bachelor's degree related to the specialty occupation. The evaluation submitted by the petitioner on appeal confirms that the beneficiary possesses a bachelor's degree deemed equivalent to a bachelor's degree in computer science. As a result, the basis for the director's decision has been overcome and the petition shall be approved.

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.

**ORDER:** The appeal is sustained. The petition is approved.