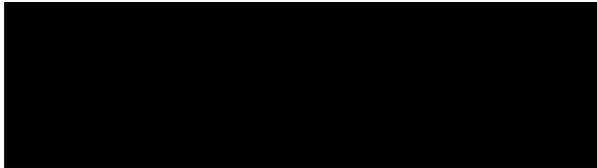


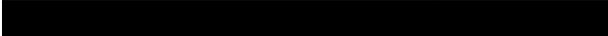
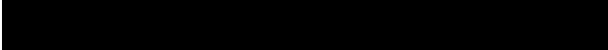
U.S. Department of Homeland Security
Citizenship and Immigration Services

PUBLIC COPY

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



File: WAC 02 038 50647 Office: CALIFORNIA SERVICE CENTER Date: **NOV 25 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:



**Identifying data deleted to
prevent unauthorized disclosure
invasion of personal privacy**

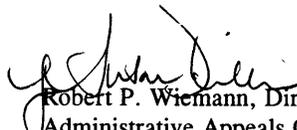
INSTRUCTIONS:

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 which 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, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a corporation that provides computer software services to the general public. It has 16 employees, a gross annual income of \$800,000, and seeks to employ the beneficiary as a software engineer. The director denied the petition because the beneficiary did not qualify to perform the duties of a specialty occupation, and because the petitioner did not provide client contracts establishing that employment was readily available for the beneficiary in a specialty occupation, or that the beneficiary's employment would comply with the terms of the applicable labor conditions application (LCA).

On appeal, counsel submits a brief and additional information. Counsel asserts that the beneficiary is qualified to perform the duties of a specialty occupation. In support of that assertion, counsel submits a statement from the Dean of the College of Arts and Sciences at Western Washington University indicating that: the university is a regionally accredited university, [REDACTED] is a faculty member at that university; and that Dr. [REDACTED] has authority to grant college-level credit for training and work experience at the university. Counsel further asserts that the petitioner is not acting as an agent for the beneficiary, but will be the beneficiary's employer with all work being assigned by the petitioner and performed at the petitioner's primary place of business.

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.

Implicit in the director's denial letter is his conclusion that the proffered position is a specialty occupation. The director's determination denying the I-129 petition was based solely on the beneficiary's qualifications to perform the duties associated with that occupation, and whether valid client contracts existed which would provide the beneficiary with employment in a specialty occupation. The issues to be discussed in this proceeding are whether the beneficiary is qualified to perform the duties of a specialty occupation, and whether the petitioner is required to produce client contracts to establish LCA compliance and that a specialty occupation exists for the beneficiary.

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) completion of such experience in the specialty equivalent to the 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 or 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.

The director determined, in part, that the beneficiary did not qualify to perform the duties of a specialty occupation because the evaluations submitted to establish the beneficiary's qualifications were not performed by evaluators having 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. An evaluation dated February 11, 2002, was presented by Dr. James Hearne, Associate Professor in the Computer Science Department of Western Washington University. Dr. Hearne stated that the beneficiary's education

and work experience was equivalent to a Bachelor of Science Degree in Computer Science at an accredited institution of higher education in the United States. Dr. Hearne further opined that a degree in computer science, or its equivalent, qualified the beneficiary to perform the duties associated with the proffered position. On appeal, counsel submitted a statement from Ron Kleinknecht, Acting Dean of the College of Arts and Sciences at Western Washington University. Mr. Kleinknecht established that Dr. [REDACTED] authority to grant college-level credit for training and/or work experience under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). A statement was also submitted from Thomas Downing, Acting Chair of the Computer Science Department at Western Washington University, establishing that Dr. Hearne was a full-time tenured professor at that university. The petitioner has sufficiently addressed the director's reservations concerning the beneficiary's qualifications to perform the duties of the specialty occupation. The beneficiary is qualified for the position.

The final issue to be considered is whether contracts between the petitioner and potential clients are relevant to the proceedings. The petitioner clearly indicated with the filing of the I-129 petition, and in its response to the director's request for evidence, that it would directly employ the beneficiary at its primary business location. The beneficiary will perform services for, and at the direction of, the petitioner on computer projects in the course of the petitioner's business operations. The petitioner is not acting as an agent for other business enterprises, but is the direct employer of the beneficiary with immediate supervisory control over the beneficiary's day-to-day business activities. Accordingly, the director's demand for production of client contracts is inappropriate as they are not relevant to the beneficiary's classification under the I-129 petition.

The burden of proof in these proceedings rests solely with the petitioner and that burden has been sustained. Section 291 of the Act, 8 U.S.C. § 1361. The appeal shall accordingly be sustained, and the petition will be approved.

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