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Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
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Washington, D.C. 20536



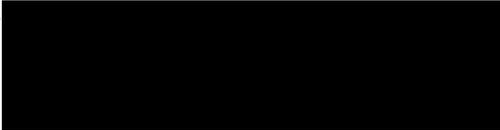
FILE: WAC 01 022 53512 Office: CALIFORNIA SERVICE CENTER

Date: **NOV 26 2003**

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:



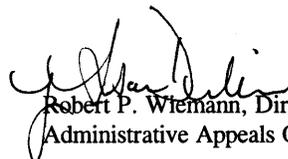
INSTRUCTIONS:

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, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an import/export business. It employs 25 people and has a gross annual income of over \$4,000,000. It seeks to temporarily employ the beneficiary as a systems analyst for a period of three years. The petitioner seeks a change of status for the beneficiary from an F-1 classification to an H1-B classification. The director determined that the petitioner had not established that the beneficiary is qualified for the proffered specialty occupation.

On appeal, counsel asserts that the director erred in determining that the beneficiary is not qualified for the position, and that he ignored the evidence and information provided. Counsel also states that the decision was based on an issue not raised in the director's request for evidence.

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 first issue to be considered is whether the beneficiary meets any of the criteria listed in 8 C.F.R. § 214.2(h)(4)(iii)(C). As the proffered position is a systems analyst, the beneficiary must possess a baccalaureate degree, or its equivalent, in computer science or management information systems.

**1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university.**

The beneficiary holds a degree from Kon-Kuk University in Seoul, Korea; the beneficiary does not meet this criterion.

**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.**

The proffered position is as a systems analyst. The beneficiary's degree is in French language and literature, which cannot be considered to be a degree required by this particular occupation.

**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.**

This occupation does not require a State license, registration, or certification.

**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.**

This is the only criterion that the beneficiary could possibly meet. In considering whether the beneficiary qualifies under this category by virtue of her education, practical experience, and/or specialized training, 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 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. 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. . . . 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.

Counsel asserts that the director:

[M]ade no mention and placed no credence whatsoever on the evidence in its possession in the form of a *professional credentials evaluation* issued by a noted expert in the field of foreign credentials evaluation and training equivalency evaluation. . . which states "In summary, it is the judgement [sic] of the Foundation that [the beneficiary] has . . . an educational background equivalent of an individual with a *bachelor's degree in computer science* from an accredited college or university in the United States." (Emphasis in the original).

It is noted that the Evaluation Report prepared by the Foundation for International Services, Inc. (FIS) and submitted with the initial filing of the petition does not meet the standards of the regulations for determining equivalency. The Evaluation purports to determine that the beneficiary has the equivalent of a bachelor's degree in computer science as a result of her education, professional training and employment experience. FIS

is not qualified to prepare an evaluation of this sort as it does not: "[Have] 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 the regulation. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

FIS is qualified to provide an evaluation of the beneficiary's foreign degree pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(3): "An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials." In the evaluation, FIS determined that the beneficiary's foreign degree is equivalent to a bachelor's degree in French and literature from an accredited college or university in the United States. This part of the evaluation is accepted, but the AAO does not accept the assessment of the beneficiary's work experience and other training as FIS is not qualified to make that assessment.

The petitioner has not demonstrated that the beneficiary's education and experience are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), (2), (3) or (4). The only category under which the beneficiary could qualify would be 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). As cited above, one means of documenting the beneficiary's expertise is through recognition of that expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation.

Counsel submitted three letters in addition to the Evaluation (which has already been discussed and will not be addressed any further). The first letter is from [REDACTED] CEO of Newmerica Technology, who holds a Master of Science Degree in Computer Information Systems. He stated that the beneficiary completed coursework to achieve her Microsoft Certified Network Engineer and Cisco Certified Network Associate ratings. He also stated that she is qualified for a "task where comprehensive network knowledge is required. . . . [S]he has a [sic] ability to do the task for network system analyst." [REDACTED] was the program director of the facility where the beneficiary received her training.

The second letter is from [REDACTED] a colleague for about one year at Tele-Com, Art in Korea [REDACTED] stated that she and the beneficiary worked at "computer educational programming but also at managing the company's computer system." [REDACTED] has a Bachelor's Degree in Computer Science from Seoul Seoil University.

The third letter is from [REDACTED], an administrator at the Narae Fine Art Academy where the beneficiary worked from July 1992 to February 1995 as a teacher in "computer education, taught basic knowledge of hardware and software, developed the academy operation and management program (for registration, attendance check, students' record filing and academy affairs etc.). She was in charge of computer system development and troubleshooting for the academy computers." Mee Hee Jeong has a Bachelor's Degree in Applied Fine Arts.

Pursuant to the regulations, the petitioner must present evidence that the beneficiary has recognition of expertise in the specialty by at least one of the forms of documentation referenced at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i)-(v). Counsel did not submit any evidence to support the beneficiary's eligibility under this regulation other than the three letters, which are considered under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i). This standard requires "[r]ecognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation." The letter from [REDACTED] would qualify under this standard; however, the other two letters are not from "recognized authorities" and, therefore, cannot be used to document the beneficiary's expertise.

Counsel asserts that the denial is based upon an issue that was not raised in the director's request for evidence. If this were true, and there were no other grounds for denial, the matter would need to be remanded to the director for further consideration. The director stated, "[T]he petitioner has not established that the beneficiary is qualified for the specialty occupation proffered. Consequently, the beneficiary does not adequately meet any of the preceding criteria to qualify to perform services in the specialty occupation." Counsel states on appeal:

The Service did not notify the petitioner of this concern and failed to take into consideration evidence submitted until generating their denial notice. The Service had opportunity to raise the issue in its initial Request for Evidence notice issued in May, 2001 [sic]. Not having indicated that the documentation and evaluations of the beneficiary's experience and training were in question, whether real or imagined as in the instant petition, and then denying a petition based on the petitioner's failure to meet an arbitrary standard is a capricious practice which is unethical and goes contrary to public policy which is the basis of all Immigration rule [sic].

The director's request for evidence stated:

Provide verifiable evidence of all the beneficiary's work experience related to the position offered. Any employment/experience letters should be on company letterhead with the dates of employment, and should describe, in detail, the duties the beneficiary performed, and whether the alien's experience was gained while working with peers, supervisors or subordinates who have a degree or its equivalent in the specialty occupation.

While the director did not make his request as clear as he might have, the language of the request tracks the language of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), which gives adequate notice to counsel and the petitioner as to the director's concerns with the petition.

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.