

PUBLIC COPY

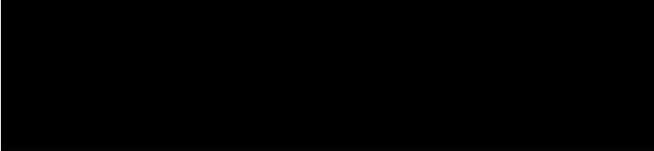
U.S. Department of Homeland Security

Citizenship and Immigration Services

DZ

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street, NW
Washington, D.C. 20536



FILE: EAC 01 115 52578 Office: VERMONT SERVICE CENTER

Date: **NOV 26 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:



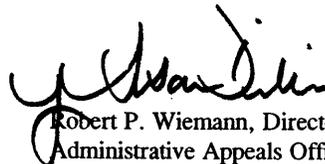
INSTRUCTIONS:

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 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 implements information technology systems. The petitioner and its parent company employ 177,000 people and have a gross annual income of \$82,000,000,000. It seeks to temporarily employ the beneficiary as a programmer analyst for a period of three years. 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 the he ignored the evidence and information provided.

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 is as a programmer analyst. The beneficiary has a bachelor's degree in commerce and a master's of business administration. The petitioner described the position as requiring a Programmer Analyst:

[W]ith a background in finance or a related field and an understanding of substantive financial transactions, to design and develop software modules to support the accounting-based information technology systems of our corporate clients. . . . The Programmer Analyst's initial assignment will be to analyze current operational procedures, identify problems, and determine software and networking requirements for these systems. Based on the results of this review and analysis, the Programmer Analyst will generate a requirements statement and develop new financial and accounting-based software to meet the client's current and projected needs. This will involve the documentation of technical design specifications and the diagnostic and evaluation testing of the software developed during each project cycle.

In the response to the director's request for evidence, counsel submitted a letter from the client, Citigroup's Global Corporate Investment Bank (GCIB), for whom the beneficiary would be working. This letter states that the Programmer Analyst position:

[R]equires not simply skills in computer software design, but also a thorough background in finance, commerce, or business administration and an understanding of substantive financial and banking transactions. The Programmer Analyst must possess this knowledge and experience to review and analyze GCIB's software needs in light of the business setting in which the software is to be used, as well as to apply and integrate the new software into the practical, day-to-day operations of the bank, and to evaluate whether the newly designed and implemented software functions properly to fulfill our actual requirements and perform the necessary financial and accounting operations in that environment.

The substantive knowledge required for a position of this kind is generally obtained by completing a course of study leading, at a minimum, to a bachelor's degree in finance or a related field of study.

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).

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

The beneficiary holds degrees from the University of Delhi and the University of Pune in India; 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.

Considering the position description, the director found, and the AAO concurs, "the position requires training and experience in business principles in addition to training in systems analysis. Clearly the beneficiary possesses the requisite education in business administration." This position also requires, however, skills and abilities in software design. There is no indication in the record that the beneficiary has any university-level education in systems analysis or software design.

Counsel asserts:

The August 1st Decision erroneously requires the beneficiary to possess education and training for a second specialty occupation in the computer field *in addition to* education and training in finance or business administration rather than simply the requisite degree in finance or business administration. The Decision's "in addition to" standard is contrary to the statute and regulations. [Emphasis in the original].

Counsel is incorrect in this assertion. The beneficiary must have all of the skills needed for a proffered position in order to be eligible for the H-1B classification. Counsel states, "[T]he 'specific specialty' required for the proffered position is finance, business administration, or a related field affording an understanding of substantive financial transactions and accounting principles." While these skills are clearly needed to fill the proffered position, counsel is ignoring that additional skills are needed in order to support the primary goal of the position: to develop software. One would not need the financial skills and background without also possessing the principle element of the position as a software developer.

Counsel states that the instant case is directly analogous to a 1985 case decided by the Administrative Appeals Unit (AAU), *Matter*

of X, 3 Immig. Rptr. B2-14 (Admin. App. Unit 1985). In that case the AAU determined that a position of computer programmer qualified as a 'profession' since it required advanced economic study. This case is not on point. The issue there was whether a computer programmer, which under the regulations at that time was not considered a professional occupation, would rise to the level of a profession if the position required advanced economic analysis. As counsel states, the AAU decided that the position was "clearly in the area of economic analysis, and requires advanced economic study . . .," notwithstanding that it "also involves . . . computer programming." The issue in the instant case is not whether the position is a specialty occupation. The director determined that it is a specialty occupation, and the AAO affirms this decision. The issue is whether the beneficiary has the requisite education in all areas of the position description to meet the terms of the regulations. Contrary to counsel's assertions, this position is not primarily in financial analysis; it is an amalgam position that blends two fields. As such, the petitioner must establish the beneficiary's qualifications in both; it has not done so.

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.

Counsel submits a letter from the beneficiary's former employer stating that he worked there for 23 months as a software programmer, but without any detail of what the position entailed.

In considering whether the beneficiary qualifies under this category by virtue of his 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 submits no evidence to show that the beneficiary has the equivalent of a bachelor's degree in a software-related field. The letter from the beneficiary's former employer does not provide enough information to meet the terms of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(i). No other evidence is on record.

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.