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

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



File: LIN-02-026-53813 Office: NEBRASKA SERVICE CENTER Date: OCT 17 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:



**PUBLIC COPY**

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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner designs and develops software. It has three employees and an undisclosed gross annual income. It seeks to employ the beneficiary as a software engineer for a period of three years. The director determined the petitioner had not established that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief.

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 nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and 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), 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:

(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 . . . .

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 director denied the petition because the petitioner had not demonstrated that the beneficiary's education, training, and experience are equivalent to a baccalaureate or higher degree in the specific specialty. On appeal, counsel states, in part, that the beneficiary has completed 26 courses related to the field of engineering. Counsel further states that the record contains employment letters demonstrating that the beneficiary also had more than three years of progressively more responsible positions in the field of information technology. Counsel additionally states that the petitioner submitted a professional credential evaluation report in support of her claim.

The record contains the following documentation pertaining to the beneficiary's education, training, and related employment experience:

- Copy of the beneficiary's Bachelor of Science degree in dairying conferred by an Indian institution;
- Copy of the beneficiary's Post Graduate Diploma in Business Management conferred by an Indian institution;
- Letter dated June 1, 1998, from the Indian business, Intelligroup, describing the conditions of the beneficiary's employment as an "SAP Professional";
- Letters reflecting that the beneficiary worked for Intelligroup from 06/01/98 through 09/21/01, six months as a trainee, approximately 14 months as a "Jr. Functional Consultant" and approximately 17 months as a "Consultant"; [and]
- Evaluation from a credentials evaluation service finding that the beneficiary's education, training, and employment experience are the equivalent of a Bachelor of Science Degree in Information Systems.

The proffered position is similar to that of a computer applications software engineer. In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the Department of Labor

(DOL) describes the position of computer applications software engineer as follows:

Computer applications software engineers analyze users' needs and design, create, and modify general computer applications software or specialized utility programs. Different programming languages are used, depending on the purpose of the program. The programming languages most often used are C, C++, and Java, with Fortran and Cobol used less commonly. Some software engineers develop both packaged systems and systems software or create customized applications.

In its *Handbook* at page 170, the DOL finds that most employers prefer to hire persons who have at least a bachelor's degree and broad knowledge and experience with computer systems and technologies. Usual degree concentrations for applications software engineers are software engineering or computer science. For systems software engineers, usual concentrations are computer science or computer information systems. Graduate degrees are preferred for some of the more complex jobs.

In this case, the beneficiary holds a Bachelor of Science degree in dairying and a Post Graduate Diploma in Business Management conferred by Indian institutions. Accordingly, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in the specialty occupation based upon education alone.

The beneficiary also has more than three years of computer-related employment experience. The record contains a credentials evaluation that is based on the beneficiary's educational background, professional training, and work experience. The evaluator concludes that, based on the beneficiary's educational background, professional training, and work experience, he holds the equivalent of a Bachelor of Science Degree in Information Systems from an accredited institution of higher education in the United States.

Citizenship and Immigration Services (CIS) uses an independent evaluation of a person's foreign credentials in terms of education in the United States as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be rejected or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The beneficiary's education, training and employment background has been found by an evaluator of a credentials evaluation service, Gerald L. Itzkowitz, to be equivalent to a Bachelor of Science Degree in Information Systems from an accredited institution of higher education in the United States. Although Mr. Itzkowitz asserts that, because of the positions he holds at Queens College of the City University of New York, he has the authority to grant college level credit for experience, training, and/or courses taken at other U.S. or international universities, in a letter dated November 7, 2001, the Assistant Vice President and Special Counsel to the President of Queens College, Jane Denkensohn, states, in part, as follows:

Contrary to his statement, Dr. Itzkowitz does not have the authority to grant college-level credit at Queens College of The City University of New York. The Office of Undergraduate Admissions determines whether or not to give credit to students for college-level courses taken at another college/university, domestic or foreign. While the Office of Undergraduate Admissions consults with faculty in the same academic discipline as the course(s) being evaluated, no individual faculty member has authority to grant credit for academic course work completed at another institution of higher education. (Emphasis in original.)

The record contains no explanation for the discrepancy between Mr. Itzkowitz's assertion that he has credit granting authority, and the information provided by the Assistant Vice President and Special Counsel to the President of Queens College, Ms. Denkensohn, stating that Mr. Itzkowitz does not possess such credit granting authority. Furthermore, the record does not demonstrate that the beneficiary completed essential programming courses such as C/C++. For these reasons, the evaluation is accorded little weight. In addition, the petitioner has not established that the beneficiary has met the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D).

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. 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).

The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specific specialty. The record contains no evidence that the beneficiary holds a state license, registration, or certification that authorizes him to practice a specialty occupation. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in a specialty occupation.

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.

**ORDER:** The appeal is dismissed.