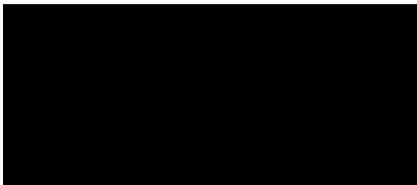


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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

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



File: EAC-02-039-53054

Office: VERMONT SERVICE CENTER

Date:

OCT 21 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: SELF-REPRESENTED

**PUBLIC COPY**

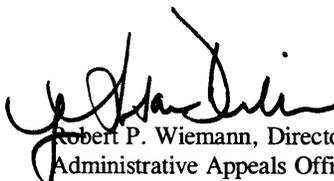
INSTRUCTIONS:

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 provides client/server business software to 200 companies worldwide. It has 8,109 employees and a gross annual income of \$1.8 billion. It seeks to extend its authorization to employ the beneficiary as a software engineer (senior consultant) for an approximate period of two years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, the petitioner's corporate 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.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position, or that the beneficiary's educational background qualifies him for a software engineer position. On appeal, counsel states, in part, as follows:

[The] Beneficiary possesses a combined educational and work experiential background equivalent to a bachelor's degree in management information systems from an accredited college or university in the United States. The Evaluation Report was written by Diane Hurley, an

evaluator for Foundation of International Services. Her curriculum vita was also provided for the VSC's reference. Based upon an evaluation of [the] Beneficiary's educational documents, Ms. Hurley found that [the] Beneficiary also possessed the equivalent of a master's degree in statistics from an accredited college or university in the United States. [The] Beneficiary is therefore a candidate qualified to work in a specialty occupation that requires a baccalaureate degree in management information systems from an accredited college or university in the United States.

. . . .

[The] Beneficiary's management systems degree is an ideal match for the position offered by [the] Petitioner: software engineer (senior consultant). A management information degree is a combination of business and computer technology. The position offered requires a person with a strong background in applications development.

. . . .

In the instant petition, [the] Petitioner sought extension of [the] Beneficiary's H-1B visa. Though the internal title has changed (from "professional services consultant" to "senior consultant"), and there has been an increase in salary, there have been no changes in the circumstances of the employment offered and the job category ("software engineer") remains the same. . . .

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

3. The employer normally requires a degree or its equivalent for the position; or

4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[The beneficiary's] duties while in the United States include acting in a lead capacity on broad, complex and critical engagements for PeopleSoft customers. He provides guidance and direction to other team members as well as oversees the research and analysis requirements and processes so that he can directly contribute to the development and enhancement of PeopleSoft Consulting methods, techniques, processes and practices. More specifically, while working at a client site, [the beneficiary] identifies and provides solutions to customer problems and issues using his knowledge of PeopleSoft products and software systems to develop new or enhanced methods and techniques to resolve problems. [The beneficiary's] knowledge, guidance and presence are required for successful implementation of PeopleSoft products and software at client sites. Drawing upon his experience in application software implementation and software development, [the beneficiary] applies technology in order to meet PeopleSoft's and PeopleSoft's client's [sic] needs.

On appeal, counsel further describes the proposed duties as follows:

The candidate must engage in systems analysis, design development and maintenance in order to gauge and effectively solve the business and technological needs of [the] Petitioner's clients.

The proffered position is similar to a computer systems software engineer. In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the Department of Labor (DOL) describes the position of a computer systems software engineer as follows:

Computer systems software engineers coordinate the construction and maintenance of a company's computer systems, and plan their future growth. Working within a company, they coordinate each department's computer needs - ordering, inventory, billing, and payroll recordkeeping, for example - and make suggestions about its technical direction. They also might set up the company's intranets, networks that link computers within the organization and ease communication.

Systems software engineers work for companies that configure, implement, and install complete computer systems . . . .

At page 170 of its *Handbook*, 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 for computer software engineer positions. Usual degree concentrations for systems software engineers are computer science or computer information systems. Thus, the petitioner has demonstrated that a bachelor's degree in a specific specialty or its equivalent is required for the position being offered to the beneficiary.

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:

- (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) . . . .
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) . . . .
- (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 record contains the following:

- Beneficiary's Master of Science degree in statistics and a Bachelor of Science degree conferred by an Indian university;
- Certificate issued by an Indian business, dated April 4, 1997, certifying that the beneficiary successfully completed "Oracle Financials" course held from May 1997 to August 1997;
- Certificate issued by an Indian institute, dated October 21, 1991, in recognition of the beneficiary's completion of a 20-week, part-time certificate course in "Computer Applications for Bank Employees"; and
- Credentials evaluation, dated December 17, 1998, reflecting that, as a result of the beneficiary's educational background and employment experience, he holds the equivalent of a bachelor's degree in management information systems from an accredited college or university in the United States.

The beneficiary holds a Bachelor of Science degree (unknown major) and a Master of Science degree in statistics conferred by an Indian institution. The beneficiary's educational background has been found by a credentials evaluation service to be equivalent to a master's degree in statistics from an accredited college or university in the United States. As such, the petitioner has not demonstrated that the beneficiary is qualified to perform the duties of the proffered position based on education alone.

The record also indicates that the beneficiary had several years of employment experience in account administration and management information systems when the petitioner filed the original petition for the beneficiary. The evaluator concluded that, as a result of the beneficiary's educational background and employment experience, he holds the equivalent of a bachelor's degree in management information systems from an accredited college or university in the United States.

The AAO 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).

Here, the evaluation of the beneficiary's foreign credentials is based on education and employment experience. The evaluator based the portion of her conclusion pertaining to the beneficiary's employment experience solely on the information provided by the beneficiary in his resume. The record contains no secondary evidence, such as employment letters, to corroborate the information reflected in the beneficiary's resume. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972).

Furthermore, the record does not establish that the evaluator is an official who has the 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 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). In view of the foregoing, the evaluation is accorded little weight.

It is also noted that, although the evidence in the record indicates that the beneficiary has been employed by the petitioner for three years previous to the filing of the instant petition, the record does not contain any documentation to establish that he has achieved recognition of expertise in the specialty occupation, in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

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.

With respect to counsel's objection to denial of this petition in view of the approval of a similar petition in the past, the AAO is never bound by a decision of a service center or district director. *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp. 2d 800, 803 (E.D. La. 2000), *aff'd*, 248 F. 3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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 decision of the director will not be disturbed.

**ORDER:** The appeal is dismissed.