



U.S. Citizenship
and Immigration
Services

[Handwritten initials]

[Redacted]

FILE: LIN 02 116 54061 Office: NEBRASKA SERVICE CENTER Date: APR 26 2004

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:

[Redacted]

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

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director approved the nonimmigrant visa petition. The director then revoked approval of the petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be affirmed. The petition will be revoked.

The petitioner is a medical practice that seeks to employ the beneficiary as a network analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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). On July 12, 2002, the director issued a notice of intent to revoke the approval based on information from the United States Consulate in Chennai, India, indicating that the beneficiary had not completed a bachelor's degree and he was unable to answer basic questions in the specialty subject during his interview. The petitioner was given 30 days to submit evidence in support of the petition and in opposition to the revocation. On September 10, 2002, the director revoked the approval of the petition because the petitioner did not respond to the notice of intended revocation. On September 19, 2002, counsel filed an appeal, including the tracking results from FedEx indicating that the response was delivered on August 12, 2002. On appeal, counsel submits a copy of the response. The AAO notes that the intended delivery address was [REDACTED] but that actual delivery was made to [REDACTED]. This appears to be an error on the part of FedEx, and the AAO accepts that the response was filed in a timely manner.

The response to notice of revocation is now being considered on appeal. Counsel asserts that the beneficiary has the equivalent of a bachelor's degree in computer information systems based upon a combination of his education and his experience. Counsel references a number of documents that had been submitted with the petition, including: 1) an "Evaluation of Academics and Experience" from Morningside Evaluations and Consulting; 2) a letter from [REDACTED] of Silicon City Computer Centre in Bangalore, India; 3) a letter from [REDACTED] of Softech Computer Centre in Bangalore, India; and 4) a letter from [REDACTED] of Compuserve in Bangalore, India. Counsel states that these documents establish the beneficiary's eligibility by meeting several of the regulatory requirements.

Counsel states that the Evaluation of Academics and Experience is from a reliable credentials evaluation service, which determined that the beneficiary's education and experience are equivalent to a bachelor's degree in computer information systems. The evaluation prepared by Morningside Evaluations and Consulting does not meet the requirements of the regulations for determining equivalency. Morningside Evaluations and Consulting 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 regulations. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The evaluator, Dr. [REDACTED] does state, "Because of the positions I hold at Queens College of the City University of New York, I have the authority to grant college level credit for experience, training, and/or courses taken at other US or international universities." The AAO notes that the evaluator has been found to have misstated his qualifications to grant college-level credit. The Assistant Vice President and Special Counsel to the President of Queens College, in a November 7, 2001 letter to the Immigration and Naturalization Service, specifically states that, despite Dr. [REDACTED] assertion, he does not have the authority to grant college-level credit at Queens College for experience or coursework taken at other institutions.

Citizenship and Immigration Services (CIS) uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*,

19 I&N Dec. 817 (Comm. 1988). The evaluation is, therefore, disregarded, in that even the portion that deals specifically with the beneficiary's academic preparation makes a comparison that is questionable. The evaluator determines that the beneficiary's 11 courses taken to receive his diploma are equivalent to three years of coursework in a United States university. Information provided by the consulate indicates that the diploma earned by the beneficiary would be equivalent to one year of university education, dependent upon a course-by-course evaluation.

The three letters submitted by counsel go in to significant detail as to the beneficiary's duties with each of the three companies; however, they do not meet the terms of the regulations. When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), 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 occupation¹;
- (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.

None of the letters indicate that the beneficiary gained his experience working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. In addition, the authors of the three letters do not meet the definition of "recognized authority," in that they do not include any of the information required by the regulations.

The petitioner has not established that the beneficiary has education, specialized training, and/or progressively responsible experience that is equivalent to completion of a bachelor's degree in the specialty occupation.

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

Regarding the issue of the beneficiary's interview at the consulate, the beneficiary's explanation is reasonable, and if the petitioner had established that the beneficiary were otherwise eligible to perform a specialty occupation, the beneficiary should have an opportunity to be re-interviewed, in the interest of fairness.

Since the petitioner did not establish the beneficiary's qualifications to perform a specialty occupation, the petition must be revoked.

ORDER: The decision of the director is affirmed and the petition is revoked.