



U.S. Citizenship
and Immigration
Services

D2

[Redacted]

FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: 11/15/16

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

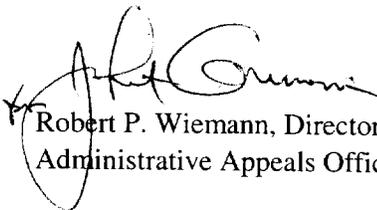
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

[Redacted]

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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the service center director. Based upon information obtained from a service center investigation, the director determined that the beneficiary was not clearly eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of her intent to revoke approval of the visa petition and her reasons therefore, and ultimately revoked the approval of the petition, indicating that the petitioner did not respond to the notice of intent. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a software development and systems integration business that seeks to employ the beneficiary as a programmer 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).

The director revoked approval of the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits evidence that a response to the director's notice of intent to revoke was timely submitted. Counsel states that the petitioner has submitted sufficient documentation to demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation.

Under CIS regulations, the approval of an H-1B petition may be revoked on notice under five specific circumstances. 8 C.F.R. § 214.2(h)(11)(iii)(A). To properly revoke the approval of a petition, the director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(h)(11)(iii)(B).

In the present matter, the director provided a detailed statement of the grounds for the revocation but did not cite to the specific provision of the regulations as a basis for the revocation. Referring to one of the eligibility criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C), the director reviewed the rebuttal evidence and concluded that the petitioner had not established that the beneficiary is qualified to perform services in a specialty occupation. Upon review, the director revoked the approval on the basis of 8 C.F.R. § 214.2(h)(11)(iii)(A)(5): "The approval of the petition violated paragraph (h) of this section or involved gross error." The director clearly articulated how the erroneous approval of the petition "violated paragraph (h)" of the regulations and the AAO concurs with the director's findings.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) 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 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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's approval notice; (3) the director's investigation of the beneficiary's foreign degree; (4) the director's notice of intent to revoke; (5) the director's decision revoking the petition; and (6) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a programmer analyst. The petitioner indicated in its August 17, 1998 letter that a qualified candidate for the job would possess the equivalent of a bachelor's degree in computer science or a related field. The record contains copies of the beneficiary's bachelor's degree in chemistry and master's degree in chemistry conferred by Indian institutions. The record also contains a copy of the beneficiary's "Honours Diploma in Systems Management" conferred by NIIT at Madras, India. An evaluator from Foreign Credentials Service of America (FCSA), a company that specializes in evaluating academic credentials, concluded that the beneficiary possesses the equivalent of a bachelor of science degree in chemistry from an accredited U.S. university, and one-half year or up to 15 semester hours of undergraduate credit in systems management, as awarded by an unaccredited U.S. institution.

In her notice of intent to revoke, dated March 14, 2001, the director stated that an investigation found that the Indian institution, Andhra University, has no record of a master's degree ever being issued to the beneficiary. In a letter dated April 9, 2001, submitted in response to the director's notice of intent to revoke, counsel states that the beneficiary's bachelor's degree in chemistry from the University of Madras and her computer-related employment experience qualifies her for the proffered position. It is noted that, on appeal, counsel submits a copy of a document signed by the "ADDL. CONTROLLER OF EXAMINATIONS" from Andhra University verifying that the beneficiary holds a master's degree from Andhra University.

The record contains the following documentation related to the beneficiary's qualifications:

- Bachelor's degree in chemistry issued to [REDACTED] by the registrar of the University of Madras on December 29, 1992;
- Transcripts for [REDACTED] from the University of Madras;

- Master's degree in chemistry issued to [REDACTED] by the registrar of Andhra University on August 27, 1997;
- Transcripts for [REDACTED] from Andhra University;
- Facsimile [date illegible] from the "COMPTROLLER OF EXAMINATIONS" of Andhra University, indicating that the beneficiary's master's degree is genuine;
- Certificate from Andhra University, signed by the "ADDL. CONTROLLER OF EXAMINATIONS," certifying that the copy of the beneficiary's "academic credential" of her master's degree is genuine;
- "Honours Diploma in SYSTEMS MANAGEMENT," a one and one-half years course, issued to "MADHAVIM" on October 14, 1996;
- Credentials evaluation from FCSA, dated August 22, 1997, concluding that the beneficiary's bachelor's degree in chemistry and master's degree in chemistry, and her "Honours Diploma in Systems Management" are the equivalent of a Bachelor of Science degree in chemistry awarded by an accredited U.S. university, and one-half year or up to 15 semester hours in systems management from an unaccredited U.S. institution;
- Certificate of Merit from Software Solution Integrated Limited in Madras, Indian, issued to [REDACTED] on July 22, 1996, for successfully completing a course in "DIPLOMA IN RDBMS in ORACLE V 7.1";
- Training Certificate from Kodenet, Inc. in Irving, Texas, issued to [REDACTED] on May 20, 1997, for successfully completing a training course for "Client Server Application Development using Power Builder 5.0";
- Beneficiary's transcript from Dallas County Community College District, dated June 4, 1997, reflecting that she completed eight semester hours of computer-related courses;
- Beneficiary's transcript from North Lake College in Irving, Texas, dated August 15, 1997, reflecting that she completed a computer-related course worth three semester hours;
- Letter from the office manager of [REDACTED] (ZCS), dated January 23, 1996, certifying that the beneficiary was employed by ZCS as a programmer analyst from March 1995 to January 1996; and
- Letter from the executive manager of [REDACTED] (RCI), dated October 28, 1996, certifying that the beneficiary was employed by RCI as a programmer analyst from February 1996 to October 1996.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has

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, an 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.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in a computer-related field. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in a computer-related field. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree 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.

The record contains a credentials evaluation from FCSA concluding that the beneficiary's bachelor's degree in chemistry, her master's degree in chemistry, and her "Honours Diploma in Systems Management" are the equivalent of a Bachelor of Science degree in chemistry awarded by an accredited U.S. university, and one-half year or up to 15 semester hours in systems management from an unaccredited U.S. institution. The evaluator, however, does not conclude that the beneficiary holds the equivalent of a U.S. degree in a computer-related field. Furthermore, the evaluator bases his conclusion, in part, on the beneficiary's master's degree from Andhra University, which, even though allegedly authenticated by documents submitted on appeal, was found by the director to be fraudulent. It is noted that the record contains no independent evidence demonstrating the finding of fraud or that the beneficiary does not in fact possess the claimed degree. Denial of this petition cannot be based upon the serious allegations of the director without evidence offered in support of those conclusions. Just as the unproven assertions of counsel are not evidence, neither are the unsupported conclusions of the director. *Cf. Matter of Obaigbena*, 19 I&N Dec. 533, 534 note (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

This petition may not be denied based on inferences or conclusions that are not supported by the record. Observations contained in an investigative report that are conclusory, speculative, equivocal, or irrelevant do not provide good and sufficient cause for the issuance of a notice of intent to revoke the approval of a visa petition and cannot serve as the basis for revocation. *Matter of Arias*, 19 I&N Dec. 568 (BIA 1988). Accordingly, the AAO has considered only the evidence of record in reaching its decision.

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;

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).

- (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 also contains two employment letters, college transcripts of computer training, and various computer-training certificates. Such documentation does not establish equivalence to a baccalaureate degree in a computer-related field. The computer training certificates do not indicate the length of training. In addition, the petitioner did not submit any independent evidence to illustrate how these training certificates relate to the completion of a baccalaureate degree in a computer-related field. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, regarding the beneficiary's prior work experience, as described by each employer, there is no indication that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

Finally, there is insufficient evidence that the beneficiary has recognition of expertise. As stated previously, the record contains no independent evaluation or opinion concluding that the beneficiary holds the equivalent of a computer-related baccalaureate degree.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform a specialty occupation. Accordingly, the AAO shall not disturb the director's revocation of the petition's approval.

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. The petition's approval is revoked.