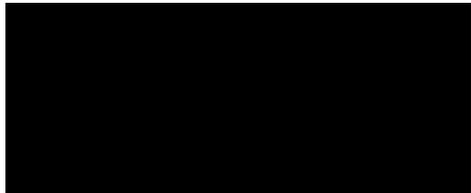




U.S. Citizenship
and Immigration
Services

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FILE: SRC 03 063 52917 Office: TEXAS SERVICE CENTER Date: AUG 31 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:

SELF-REPRESENTED

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 Plunson

to Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The service center director denied the nonimmigrant visa petition and 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 consultant and project management 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 § 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 denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, the petitioner submits a letter and additional information.

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.

The record of proceeding before the AAO contains, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) 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 December 12, 2002 letter that the beneficiary is well qualified for the proffered position because he holds a

master's degree in business administration conferred by an Indian institution, and he also holds related training certificates and employment experience.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, the petitioner states, in part, that, in order to qualify for the proffered position, the applicant must have the minimum of a bachelor's degree in finance, or a related field, and experience in Oracle/PeopleSoft Financial Applications. The petitioner further states that the beneficiary is qualified for the position because he has a bachelor's degree in commerce and a master's degree in finance and accounting, which included two computer-related courses. The petitioner further states that the beneficiary has completed computer training and has computer-related employment experience.

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

- Bachelor of Commerce degree issued to the beneficiary on September 26, 1995 by an Indian institution, and transcripts;
- Master of Business Administration degree issued to the beneficiary in April 1997, and transcripts;
- Credentials evaluation from the Multinational Education & Information Services, Inc. (MEI Services, Inc.) concluding that the beneficiary's bachelor's degree in commerce and one year of his two years of his master's degree in business administration are equivalent to a bachelor's degree in business administration from an accredited U.S. university, and his remaining one year of the degree in business administration is equivalent to one year of graduate studies in business administration from and accredited U.S. university;
- Certificate, dated April 5, 1996, issued by "SILICON INFO SYSTEMS" to the beneficiary for completion of the PGDCA [Post Graduate Diploma in Computer Applications] course, from April 1995 to March 1996, and transcripts;
- Certificate, dated July 30, 1996, issued by "SILICON INFO SYSTEMS" to the beneficiary for completion of the ORACLE 7.1 course from May 1996 to July 1996, and transcript;
- Certificate, dated March 13, 1998, issued by "GENESIS SOFTWARE SYSTEMS" to the beneficiary for completion of the Oracle Financials course from November 1997 to February 1998;
- Letter, dated December 28, 2000, from the accounting supervisor of the Australian business, Foster's Group, who states, in part, that the beneficiary was employed at the said business for nine months as a programmer/analyst; and
- Letter, dated March 9, 2000, from the managing director of the Australian business, Mercury Technologies, who states, in part, that the beneficiary was employed at the said business from February 1999 to March 2000 as a programmer/analyst.

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. A review of the *Handbook*, 2004-2005, edition finds that, for programmer-analyst positions, many employers seek applicants who have a bachelor's degree in computer science, information science, or management information systems (MIS). In this case, 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 in a computer-related field from a U.S. college or university in any field of study. 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.

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;

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

- (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 a credentials evaluation from the Multinational Education & Information Services, Inc. (MEI Services, Inc.) concluding that the beneficiary's bachelor's degree in commerce and one year of his two years of his master's degree in business administration are equivalent to a bachelor's degree in business administration from an accredited U.S. university, and his remaining one year of the degree in business administration is equivalent to one year of graduate studies in business administration from and accredited U.S. university. The record also contains two employment letters and various computer-training certificates.

The documentation does not establish equivalence to a baccalaureate degree in computer science, information science, management information systems (MIS) or any other computer-related field. Although the beneficiary's computer training includes computer courses completed at "SILICON INFO SYSTEMS" at Guntur, India, the record contains no information concerning the credentials of this institution, nor does a computer check provide any verification of its existence. It is also noted that the record does not contain 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, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). In view of the foregoing, 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).

The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. Both employers describe the beneficiary's duties generically; no specificity to the beneficiary's daily activities or his level of responsibility is provided. Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is programming analysis. Furthermore, neither employer indicates 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. It is additionally noted that, although the record contains payroll stubs for the beneficiary's more recent employment at Integrated Resources of America LLC, located in New Jersey, the record contains no employment letter from this business, nor does the petitioner mention such employment on appeal. Without further explanation or supporting documentation, the AAO has no context within which to consider these payroll stubs and to evaluate this portion of the beneficiary's work history.

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).

Finally, there is insufficient evidence that the beneficiary has recognition of expertise, as the record contains no independent opinion or evaluation concluding that the beneficiary holds the equivalent of a computer-related degree, from a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render such opinion.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

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 is denied.