

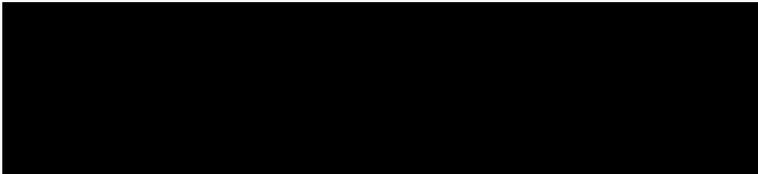
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U.S. Citizenship  
and Immigration  
Services

DZ



DEC 01 2004

FILE: WAC 02 204 54213 Office: CALIFORNIA SERVICE CENTER Date:

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center denied the petitioner's 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 computer services company with six employees that proposes hiring the beneficiary as a computer systems analyst. The petitioner asserts that to perform the duties of the position, a candidate for the proffered position would need at least a bachelor's degree in computer science or its equivalent. The petition asks Citizenship and Immigration Services (CIS) 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 denied the petition on the grounds that the petitioner failed to show the beneficiary was qualified for the proffered position. In the decision the director stated that the petitioner had not proven that its credentials evaluators "have the authority to grant college-level credit for training and work experience," as required by 8 C.F.R. § 214.2(h)(4)(iii)(D).

Section 214(i)(2) of the Immigration and Nationality Act (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 an information systems analyst. The petitioner indicated in a June 2, 2003 letter that it wished to hire the beneficiary because he possessed the equivalent of a bachelor's degree, work experience in the computer field, and computer-related training certificates. The letter emphasizes the petitioner needs to hire someone with a baccalaureate degree or its equivalent in a computer-related field for the proffered position based on past problems from hiring those with fewer years of education and 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 that the beneficiary is qualified for the position because he completed a 3-year degree program in his native country, three professional training certificates, plus five years-10 months work in the field of computer science. The petitioner also submits a supplemental credentials evaluation from a faculty member of Seattle Pacific University who has determined the beneficiary's combined college work and on-the-job experience are the equivalent of a four-year degree from a U.S. college or university in computer science. The petitioner also submits a copy of an evaluation from Foundation for International Services, Inc.

Upon review of the record, the petitioner has not established 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 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 not 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 Non-collegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service that 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.

On appeal, the petitioner submits an evaluation from a faculty member of Seattle Pacific University (SPU). A letter accompanies the evaluation from the Dean of Graduate Studies confirming that SPU faculty members have the authority to grant college level credit for training and work experience. The evaluator concluded that the beneficiary possesses the equivalent of a bachelor-of-science degree in computer information systems from an accredited U.S. college or university. The record does not indicate that SPU has a program for granting college-level credit based on an individual's training and/or experience. The AAO has independently verified that SPU does not have such a program.<sup>1</sup> Thus, the petitioner has failed to establish the beneficiary's educational equivalency under the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(D).

Included in the record is an evaluation from the Foundation for international Services, Inc. (FIS), which concluded that the beneficiary has the educational equivalency of a four-year bachelor's degree in computer information systems through three years of undergraduate study and relevant work experience equal to an additional 1.4 years of university-level credit. An educational evaluation may evaluate foreign educational credentials only. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). The AAO will not consider that portion of the evaluation that gives the beneficiary college-level credit equivalency from work experience. The AAO will accept the evaluator's conclusion that the beneficiary has the equivalent of three years of education in computer science from an accredited college or university in the United States.

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 occupation<sup>2</sup>;

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<sup>1</sup> While SPU has an internship program that allows students to receive college credit for work performed in a supervised internship program, such a program does not qualify under the regulation as a program that grants college-level credit based on an individual's training or experience.

<sup>2</sup> *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

- (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 that a recognized authority has determined are significant contributions to the field of the specialty occupation.

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.

The evidence establishes that the beneficiary's education amounts to a total of three years education in computer science, leaving a one-year educational deficit before the beneficiary would qualify for the proffered position of computer-systems information analyst. In this case, the record indicates the beneficiary has work experience totaling five years, 10 months, which would translate to more than one year of education provided it meets the requirements of the regulations.

The evidence of record includes letters from three former employers of the beneficiary. One of these employers indicates that the beneficiary was employed as a programmer from March through August 1997, but lists no job duties. The evidence also contains letters and certified translations indicating that the beneficiary worked as a programmer and operator of computer systems for two different companies in Peru, one from October 1998 to October 2000, and the second from November 2000 to November 2003. The job descriptions in these two letters do not indicate with sufficient specificity the duties of the positions such that the AAO can conclude that the beneficiary's work experience included the theoretical and practical application of specialized knowledge. Further, the information in the record does not indicate that the beneficiary's experience was gained while working with peers, supervisors or subordinates who have degrees or the equivalent in the specialty; or resulted in any recognition of his expertise in the specialty. The AAO notes further that the information contained in the letters from the two different Peruvian employers is nearly identical, which diminishes the weight to be accorded the letters.

As related in the discussion above, the petitioner has established 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.

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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).

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.