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U.S. Citizenship  
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Services

DA



FILE: WAC 02 236 55711 Office: CALIFORNIA SERVICE CENTER Date: JUN 24 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:



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 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 computer consulting business that seeks to employ the beneficiary as a software consultant. 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 denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a statement.

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 a software consultant. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in computer science, information systems, engineering, business administration, or an equivalent thereof.

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, counsel states that the beneficiary is qualified for the position because the record contains two credential evaluations finding that he holds the equivalent of a baccalaureate degree in a computer-related field. Counsel further states that the beneficiary was previously granted H-1B status with Cyberthink.

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

- Evaluation from the credentials evaluation service, Frances Hewitt, Inc., dated February 13, 2003, concluding that the beneficiary's undergraduate academic training and his employment experience in the Information Technology field are the equivalent of a Bachelor of Science degree in Computer Science and Engineering from an accredited college or university in the United States;
- Evaluation from the credentials evaluation service, Education Evaluation and Immigration Services, dated January 25, 2000, concluding that the beneficiary's education, training, and employment experience are the equivalent of a bachelor's degree in information systems from an accredited college or university in the United States;
- Beneficiary's resume;
- Form I-797B, Approval Notice, reflecting the beneficiary's H-1B status for employment at Cyberthink, valid from May 13, 2000 to November 15, 2002;
- Employment offer, dated June 16, 2002, addressed to the beneficiary for employment as a software engineer, signed by the petitioner's president;
- Certification, dated June 4, 1992, from the Maharashtra State Board of Secondary and Higher Secondary Education, reflecting that the beneficiary passed the "Higher Secondary Certificate Examination";
- Certificate, dated July 17, 1995, issued by the Board of Technical Examinations of Maharashtra State, reflecting the number of marks obtained by the beneficiary in an electronics and video engineering course;
- Statement of Marks, issued to the beneficiary on May 14, 1996, by Shri Bhagubhai Mafatlal PolyTechnic Bombay, for the "Diploma Course in Computer Applications";
- Statement of Marks, issued to the beneficiary on December 6, 1996, by Shri Bhagubhai Mafatlal Polytechnic Mumbai, for the "Post Diploma Course in Computer Applications";
- Statement of Marks, issued to the beneficiary on March 14, 1997, by Shri Bhagubhai Mafatlal Polytechnic Mumbai, for the "Post Diploma Course in Computer Applications"; and

- Post Diploma in Computer Applications awarded by Shri Bhagubhai Mafatlal Polytechnic to the beneficiary on October 17, 1997, for the “One and Half Year Post Diploma Course in Computer Applications.”

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 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.

On appeal, counsel submits evaluations from Frances Hewitt, Inc. and from Education Evaluation and Immigration Services, companies that specialize in evaluating academic credentials. The evaluators concluded that the beneficiary possesses the equivalent of a bachelor’s degree in a computer-related field from an accredited U.S. college or university. However, the evaluations are based upon the beneficiary’s education, training and work experience. A credentials evaluation service may not evaluate an alien’s work experience or training; it can only evaluate educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluations carry no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

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