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U.S. Citizenship
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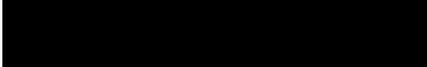


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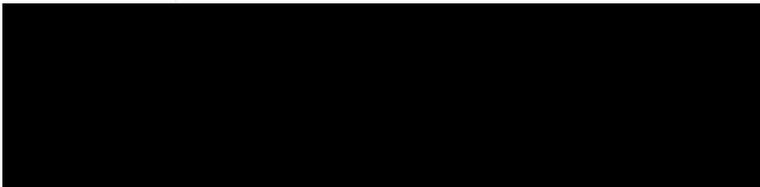
MAY 13 2004

FILE: LIN 02 256 52412 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner: 
Beneficiary: 

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 The director's decision will be withdrawn. The petition will be remanded to the director for entry of a new decision.

The petitioner operates a consulting company and seeks to employ the beneficiary as a systems consultant. It endeavors to classify him 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 did not qualify to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional information.

The director's determination denying the I-129 petition was based solely on the beneficiary's qualifications to perform the duties associated with that occupation. The petitioner's appeal of the director's decision, accordingly, addressed only the beneficiary's education, past work experience, and training. In support of that appeal, counsel submitted an experiential evaluation and information concerning the beneficiary's prior training and work history.

It is impossible for the AAO to determine the beneficiary's qualifications to perform the duties of the offered position based on the record as it now exists. The record of proceeding does not contain a detailed description of the duties to be performed by the beneficiary. The petitioner simply states on the I-129 petition that the beneficiary's duties will consist of "consulting on implementations of SAP systems and development of SNG's SAP customers." The duties are not further detailed by the petitioner, nor was additional detail requested by the director in his request for evidence. As such, the AAO cannot determine precisely what position the beneficiary would occupy with the petitioner, and what the educational requirements of such a position would be. The position certainly cannot be considered a specialty occupation based on the limited description provided.

The director's decision must, accordingly, be withdrawn and this matter remanded to the director to determine whether the proffered position qualifies as a specialty occupation. In doing so, the director shall request a detailed description of the duties to be performed, as well as any additional information he deems necessary in rendering his decision. If it is determined that the position qualifies as a specialty occupation, the director shall then determine whether the beneficiary qualifies to perform the duties of a specialty occupation.

It should be further noted that the petitioner submitted an evaluation of the beneficiary's education, training, and past work experience. That experiential evaluation stated that the beneficiary possessed the equivalent of a bachelor of science degree in computer information systems. The evaluation was rendered, however, by Morningside Evaluations and Consulting, a credentials evaluation service. Under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), a credentials evaluation service may evaluate **educational credentials** only, not past work experience. (Emphasis added.) If the petitioner wishes to submit an experiential evaluation, it should submit one 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. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The evaluation should be accompanied by a statement from a university official having administrative authority to confirm that the evaluator has the aforementioned authority.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

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ORDER: The director's decision is withdrawn. This matter is remanded to the director to enter a new decision commensurate with the directives of this opinion.