

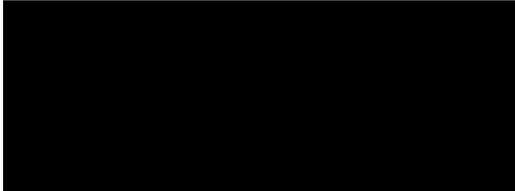
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**U.S. Citizenship
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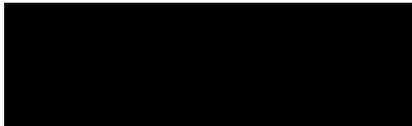
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NOV 3 2004



FILE: LIN 03 171 52913 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:

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 director of the service center 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 consulting, design, and development firm seeks to employ the beneficiary as a programmer analyst. The petitioner, therefore, 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, the petitioner submits additional evidence.

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 Form I-290B indicated that the petitioner would submit a brief and/or evidence to the AAO within 30 days. As of this date, however, the

AAO has not received any additional evidence into the record. Therefore, the record is complete. 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 that a candidate must possess a bachelor's degree in engineering, science, or equivalent education and have knowledge of systems programming, analysis, and computer languages and relevant work 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 holds the equivalent of a U.S. bachelor of science degree in engineering and computer science based on his education, training, and employment. The petitioner submits a copy of a credentials evaluation from William Edelson, a consultant for ICETS, and employment verification letters.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. The beneficiary holds a foreign degree determined to be equivalent to a bachelor's degree in mechanical engineering from a regionally accredited college or university in the United States. For a programmer analyst job, the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) indicates "many employers seek applicants who have a bachelor's degree in computer science, information science, or management information systems (MIS)." Because the beneficiary does not possess one of these degrees, 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; or
- (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 ██████████ an alleged consultant for ICETS, indicating that the beneficiary's education and training were equivalent to the completion of a bachelor's of science degree in engineering and computer science from an accredited institution of tertiary education in the United States. However, the evaluation is based upon the beneficiary's education 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 ██████████ evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The record of proceeding also contains an evaluation from Lisano International, an educational credential evaluation service, stating that the beneficiary possesses the equivalent of a bachelor's degree in mechanical engineering from a regionally accredited college or university in the United States. This degree is not in a relevant field required by the proffered position; thus, CIS must determine the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

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;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;

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).

- (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.

In addition to the beneficiary's degree and transcripts, the record also contains several employment letters and various computer-training certificates. This evidence does not establish equivalence to a baccalaureate degree in computer science, information science, MIS, or any other computer-related field. The director properly determined that the beneficiary's transcripts reflect only a few relevant introductory courses such as computer programming and computer programming lab. The computer training certificates from NIIT indicated a very brief length of training: Enterprise Java Programming - one month, Advance Java Programming - one month, Programming Using Unix and C++ - 3 months, Java Programming with JDK1.2 - 3 months, and Basics of C++ Programming - 2 months.

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 record contains employment certificates from Northern Trading L.L.C. and Team Technologies. One letter from Northern Trading L.L.C. stated that as a senior software engineer from December 2001 to March 2003, the beneficiary was involved in developing and administrating corporate software applications and backend databases. With the Team Technologies letter, the director noted an inconsistency with the beneficiary's dates of employment. One letter from Team Technologies stated that the beneficiary was employed from January 1998 to December 2001; a second letter stated that he was employed from October 1998 to December 2001; and the third letter stated that the beneficiary was initially hired in October 1997, and was confirmed as a full-time employee in January 1998. This letter claims that it is customary in India to hire an employee on a probation period of three months following which the applicant is considered a full-time employee; yet, no independent evidence corroborated this statement. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Consequently, the AAO will consider the beneficiary's employment as beginning in January 1998.

Although the duties performed by the beneficiary in the letters seem to involve the theoretical and practical application of programming and systems analysis, none of the letters indicated 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. Moreover, the AAO notes that the director pointed out that the beneficiary's period of employment with Team Technologies coincided with his NIIT coursework covering basic courses in software languages. As a software programmer analyst/lead responsible with Team Technologies, the beneficiary allegedly developed software applications using Oracle, Visual Basic, and Crystal Reports. Based on the evidentiary record, the AAO cannot determine whether there is an inconsistency with this evidence because the beneficiary's coursework in computer training may have involved learning Oracle, Visual Basic, and Crystal Reports.

Finally, there is no evidence that the beneficiary has recognition of expertise. The AAO notes that neither evaluator can be considered a "recognized authority" given that the evaluators did not provide their qualifications as experts: no resume or other evidence was attached to the evaluations.

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.