



U.S. Citizenship
and Immigration
Services



FILE: EAC 01 079 51501 Office: VERMONT SERVICE CENTER

Date: OCT 25 2004

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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prevent unauthorized
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DISCUSSION: The nonimmigrant visa petition was initially approved by the Vermont Service Center on April 2, 2001. A Notice of Intent to Revoke (NOIR) was thereafter served on the petitioner. The director then revoked approval of the I-129 petition on February 12, 2003. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner provides automated data processing consulting services to governmental agencies and the general public. It seeks to employ the beneficiary as a computer programmer analyst, and 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's determination revoking the Form I-129 petition was based on the beneficiary's qualifications to perform the duties associated with that occupation following an interview with the beneficiary by the United States Consulate in Chennai, India. The consulate provided an August 27, 2002 memorandum stating that at the visa interview, "the applicant was unable to answer elementary questions in the specialty subject in which he claims to have expertise." Thus, the I-129 petition was revoked.

On appeal, and in response to the director's NOIR, counsel stated that the conclusory letter from the United States Consulate in Chennai, India was insufficient in detail to warrant the revocation of the prior approval of the I-129 petition. Counsel further stated that the beneficiary was qualified to perform the duties of the proffered position.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) 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, the 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and 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.

The director initially determined that the position offered to the beneficiary qualified as a specialty occupation, and that the beneficiary was qualified to perform the duties of that occupation, and accordingly approved the Form I-129 petition. That approval was revoked, however, following a visa interview with the United States Consulate when the consular officer determined that the beneficiary could not answer basic questions about the beneficiary's supposed field of expertise.

Pursuant to 8 C.F.R. § 214.2(h)(11)(B)(iii)(5), the director may revoke an H-1B petition if approval of the

petition violated paragraph (h) of 8 C.F.R. § 214.2, or involved gross error. In this instance, approval of the petition was in violation of paragraph (h) of the cited regulation in that the beneficiary did not qualify to perform the duties of the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(C). Indeed, approval of the petition would constitute gross error when the beneficiary is unable to answer even basic questions about the specialty occupation that he is seeking to fill. The petitioner was given due and proper notice of the director's intent to revoke the petition. The petitioner responded to the notice. The director then appropriately revoked the Form I-129 petition on the above stated grounds.

The record contains an evaluation of the beneficiary's foreign education from Josef Silny & Associates, Inc., reporting that the beneficiary attended the Bharathiar University, where he obtained a Bachelor of Science degree in Electronics in April of 1990. That degree was determined to be equivalent to three years of undergraduate study in electromechanical technology and related subjects at a regionally accredited institution of higher education in the United States. The evaluation further states that the beneficiary continued his studies at the Bharathiar University where he was awarded a Master of Science degree in Applied Electronics in May of 1992. That degree was determined to be the equivalent of a Bachelor of Science degree in Electromechanical Technology earned at a regionally accredited institution of higher education in the United States. Transcripts are also attached, however, indicating that the beneficiary attended [REDACTED] in April of 1994, and November of 1997, along with a diploma from [REDACTED] awarding the beneficiary a Master of Science degree in Applied Electronics in November of 1997. These documents are inconsistent with the previously mentioned educational evaluation from [REDACTED] and the record does not explain the inconsistency. The petitioner did not address the beneficiary's qualifications on appeal except to say that the record establishes that the beneficiary is qualified for the proffered position. As such, the educational evaluation submitted is of little evidentiary value. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence, pointing to where the truth lies. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The conflicting evidence is material to the claim in that it brings into question whether the beneficiary is qualified to perform the duties of a specialty occupation, and further supports the director's decision to revoke the prior petition approval.

Beyond the decision of the director, the duties of the proffered position were presented in such vague and generic terms that it is impossible to determine precisely what duties the beneficiary would perform on a daily basis, or the complexity of the work to be done. As the record presently stands, the petitioner has not established that proffered position is a specialty occupation. For this additional reason, the petition may not be approved.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.