



U.S. Citizenship
and Immigration
Services

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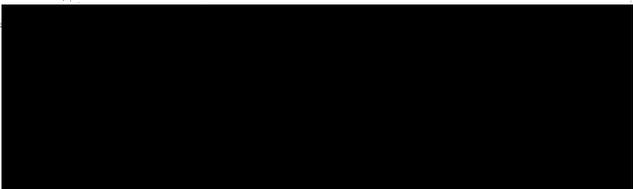


FILE: SRC 03 070 50145 Office: TEXAS SERVICE CENTER Date: SEP 02 2004

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy

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, a provider of software solutions for the telecom industry, seeks to employ the beneficiary as a software developer. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 brief.

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 AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a software developer. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in computer engineering, computer science, computer information systems, or a closely related computer or engineering discipline.

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, in part, that the petitioner has submitted sufficient evidence to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Counsel states that the record contains an evaluation from [REDACTED] Associate Academic Dean [REDACTED] certifying that the beneficiary's work experience is equivalent to a bachelor's degree in computer science from a regionally accredited U.S. college or university. Counsel further states that the record contains a certification from the Registrar of Saint Vincent College verifying that [REDACTED] authorized to review and approve academic credit for non-academic experience.

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 science 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).

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:

- (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 record contains the following documentation related to the beneficiary's qualifications:

- Evaluation from [REDACTED] an evaluator for the Foundation for International [REDACTED] who concludes that, as a result of the beneficiary's employment experience, the beneficiary holds the equivalent of a bachelor's degree in computer information systems from an accredited U.S. college or university;
- Evaluation from [REDACTED] Associate Academic Dean, Saint Vincent College, who concludes that the beneficiary's employment experience is equivalent to a Bachelor of Science degree in computer science from a regionally accredited U.S. college or university;
- Letter from [REDACTED] Registrar [REDACTED] who verifies that the office of the associate academic dean, currently held by [REDACTED] is responsible for reviewing and approving academic credit for non-academic experience;
- Letter, dated December 10, 2002, from the software manager of the Turkish business, Arter, verifying the beneficiary's employment at and ownership of Arter Data Processing & Consulting Company from 1990 to the present, and the beneficiary's performance of the following duties: executive-level decision making; setting managerial and administrative policies, procedures, and financial goals; hiring and training of administrative staff; negotiating contracts and financial terms for purchases; selecting the store location; designing layout and look of the store; setting standards and policies for consulting and purchasing inventory; coordinating with outside professionals for advertising and sales promotional activities; setting long-term and short-term goals for growth and development; monitoring payroll, cash-flow, accounts payable, and compliance with tax laws; setting budgeting policies and capital expenditure goals; and working with auditors for completion of annual audits;
- Undated letter from [REDACTED] of the [REDACTED] Hardware & Network Department, who states that the beneficiary was employed at the said business as its project manager from February 12, 1996 to April 4, 2002, and participated in the following projects: installation of implementation of "Branch Networks and Windows Network migration"; installation and implementation of Internet and Intranet infrastructures and security systems; installation of "Bank Mail System" and "TVR" system; implementation of server to mainframe connection and Help Desk system; and router configuration; and
- Confirmation letter of the beneficiary's membership in the Association for Computing Machinery (ACM).

Citizenship and Immigration Services (CIS) uses an independent evaluation of a person's foreign credentials in terms of education in the United States as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be rejected or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The record contains an evaluation from the Foundation for International Services, Inc., a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary possesses the

equivalent of a bachelor's degree in computer information systems from an accredited U.S. college or university. However, the evaluation is based upon the beneficiary's 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 also contains an evaluation from [REDACTED] Associate Academic [REDACTED] College, who concluded that the beneficiary's employment experience is equivalent to a bachelor's degree in computer science from a regionally accredited U.S. college or university. The evaluator based her conclusion on the beneficiary's employment at Arter Data Processing & Consulting Company. As stated by the director in his denial, however, the December 10, 2002 employment letter verifying the beneficiary's employment at Arter Data Processing & Consulting Company indicates only that the beneficiary managed the business; it does not indicate that the beneficiary performed the duties of a software developer. Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, *id.*

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;
- (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.

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. As described by each employer, the

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).

beneficiary's duties did not appear to involve the theoretical and practical application of software development. The software manager from Arter assigns general managerial duties to the beneficiary rather than duties related to software development. In addition, the writer of the letter from Iktisat Bank assigns duties such as "installation and implementation of Internet and Intranet infrastructure" and "installation of Bank Mail system" rather than duties related to software development. Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is software development. Furthermore, neither writer indicates 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.

The beneficiary's membership in the ACM is noted. The record contains no evidence, however, that such membership is restricted to computer professionals.

Finally, there is insufficient evidence that the beneficiary has recognition of expertise. The AAO notes that the evaluator from [REDACTED] cannot be considered a "recognized authority" because the evaluator did not provide her qualifications as an expert; no resume or other evidence was attached to the evaluation. Nor can the evaluator from the Foundation for International Services, Inc. be considered a "recognized authority" because her "Vita" did not indicate that she has expertise in a field of study related to the proffered position.

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.