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20 Mass Ave., N.W., Rm. A3042
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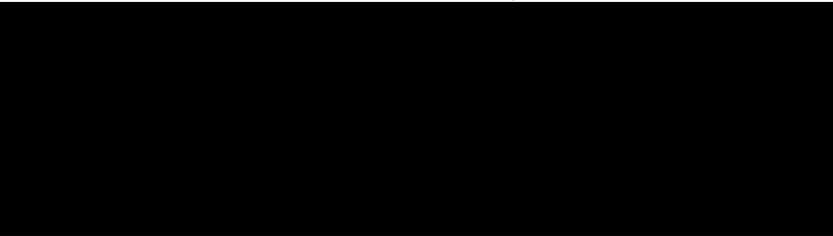


FILE: SRC 03 166 50483 Office: TEXAS SERVICE CENTER Date: SEP 30 2004

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

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 mental health clinic seeks to employ the beneficiary as a computer and information systems manager. 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, counsel submits previously submitted evidence.

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 computer and information systems manager. The petitioner indicated in an undated letter that a candidate must possess at least a bachelor's degree in information and systems management 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, counsel states that the beneficiary is qualified for the position because he completed the U.S. equivalent to a 2-year degree program in business, a 3-year course of study at Florida Green University USA in Pakistan, and has six years of work experience in the field. Counsel also asserts that the beneficiary is a member of the Computer Society of Pakistan, and received certificates and/or diplomas in computer science. Counsel refers to two evaluations confirming that the beneficiary holds the equivalent to a U.S. bachelor's degree in computer science.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position, a job that requires a baccalaureate degree in information and systems management. 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; 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, counsel refers to two evaluations: one is from the Foundation for International Services, Inc., and the other is from the American Evaluation and Translation Service, Inc., both companies specializing in evaluating academic credentials. The evaluator from the Foundation for International Services, Inc. concluded that the beneficiary's education and professional experience is the equivalent to a "bachelor's degree in management information systems from an accredited college or university in the United States." The evaluator from the latter company determined that the beneficiary's education and professional experience is the equivalent to a U.S. bachelor of science degree in computer information systems from an accredited U.S. college or university. However, the evaluations were 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).

Although the petitioner has submitted evidence of the beneficiary's membership in the Computer Society of Pakistan, there is no independent evidence that would indicate that this certification is from a nationally-recognized professional association or society for the specialty that is known to grant certification to persons in the occupational specialty who have achieved a certain level of competence in the specialty. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(4). Consequently, the certification carries little or no weight.

When Citizenship and Immigration Services (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.

The record contains an evaluation of the beneficiary's education from the American Evaluation and Translation Service, Inc. In this evaluation, the evaluator found the beneficiary's bachelor of commerce degree from the University of Karachi in Pakistan "the equivalent of the completion of two years of undergraduate study in [b]usiness [a]dministration and related subjects at a regionally accredited college or university in the United States." The Foundation for the International Services, Inc. stated that the diploma from Florida Green University in Karachi, Pakistan, certified that the beneficiary completed the bachelor's degree in computer science; however, the evaluator stated that this is equivalent to completion of a program at a school that does not have regional accreditation in the United States. The record also contains three employment letters, various computer-training and membership certificates, and a diploma in computer science. Finally, the record contains a provisional certificate and transcripts indicating that the beneficiary completed a master of computer science degree from Florida Green University U.S.A. in Pakistan.

The documentation does not establish equivalence to a baccalaureate degree in information and systems management. None of the computer training certificates indicated the length of training; only the diploma in computer science specified the completed subjects and their length of study. The petitioner never submitted any independent evidence to illustrate how the training certificates and diploma relate to the completion of a baccalaureate degree in information and systems management. Finally, the bachelor's and master's degrees completed at the Florida Green University U.S.A. in Pakistan carry little weight in this proceeding because the programs do not have regional accreditation in the United States.

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 two of the employers, the beneficiary's duties from March 1996 to January 1998, and from February 1998 to November 2000 do appear to involve the theoretical and practical application of information and systems management. Nevertheless, neither of the employers 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. Although the beneficiary's membership in the Computer Society of Pakistan seems to indicate that he is a member of a recognized foreign society in the specialty occupation, since the petitioner cannot demonstrate 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, it fails to establish that the beneficiary is qualified to perform the duties of a specialty occupation.

The AAO notes that the letter from CoBaIT failed to state the beneficiary's duties; thus, the AAO cannot determine whether these duties included the theoretical and practical application of specialized knowledge required by the specialty.

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.

Beyond the decision of the director, the AAO does not find that the proffered position is a specialty occupation because the petitioner has not clearly defined the beneficiary's proposed duties. For this additional reason, the petition would 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 not sustained that burden.

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