

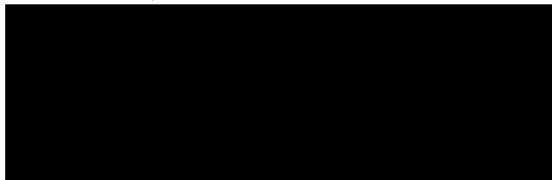
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U.S. Citizenship  
and Immigration  
Services

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FILE: EAC 03 221 54965 Office: VERMONT SERVICE CENTER Date: DEC 15 2005

IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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*

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 appeal will be dismissed. The petition will be denied.

The petitioner specializes in software consulting. The petitioner seeks to employ the beneficiary as a software engineer and to classify her 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 petitioner failed to establish that the beneficiary is 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 including two employment verification letters; (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 seeks the beneficiary's services as a software engineer. The petitioner indicated it requires a bachelor's degree in computer engineering, electronics, physical sciences, or a related field.

The director requested that the petitioner submit the following: evidence that the proposed position was a specialty occupation; evidence that the beneficiary qualified for a specialty occupation with proof of her degree and proof that the degree related directly to the position; copies of the beneficiary's college transcripts; an evaluation from an official with authority to grant college-level credit in a profession at an accredited

college or university; evidence that the beneficiary's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty; or evidence that the claimed experience was gained while working with peers, supervisors, and/or subordinates who have a degree or equivalent in the specialty and that the beneficiary has recognition of expertise in the specialty evidenced by at least one type of documentation.

In response, the petitioner submitted a more detailed job description, an evaluation letter from M. Smabandham of Multinational Education & Information Services, Inc., which concluded that the beneficiary holds the equivalent of a master's degree in physical chemistry in the United States; a transcript from the University of Madras, transcripts from the Indira Gandhi National Open University; a copy of the beneficiary's bachelor of science degree in chemistry and master of science degree in physical chemistry from the University of Madras; a diploma in management, a post-graduate diploma in management, a post-graduate diploma in financial management, and a copy of her master of business administration degree, all from the Indira Gandhi National Open University; and a list of software engineers employed by the petitioner indicating the degrees they possess.

The director denied the petition based on the petitioner's failure to demonstrate that the beneficiary was qualified to perform the duties of the proposed position. The director indicated that the two employer letters did not demonstrate the beneficiary had obtained progressively responsible qualifying work experience or sufficiently document the beneficiary's proficiencies in terms of computer programming. The director noted that the evaluation was not from an official with authority to grant college-level credit in the profession at an accredited college or university. The director found that the beneficiary's foreign diplomas and degrees were not in fields related to the proposed position.

On appeal, the petitioner asserts that the beneficiary has more than seven years of progressive experience in software engineering and that the director previously approved an H-1B petition filed by the petitioner on behalf of the beneficiary.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a bachelor's degree in a computer-related field.

The beneficiary does not hold a bachelor's degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a bachelor's 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;
- (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 approval notice for a previously filed H-1B petition filed by the petitioner on behalf of the beneficiary and an e-mail message from the beneficiary to the petitioner listing her employment history. The petitioner does not submit any education evaluations in addition to the one by M. Smabandham.

This evidence is not persuasive. M. Smabandham concludes that the beneficiary's foreign education is equivalent to a master's degree in physical chemistry from an accredited university in the United States. The *Occupational Outlook Handbook (Handbook)* indicates that usual degree concentrations for software engineers are computer science, software engineering, information technology or a related field. A master's of physical chemistry is not a field directly related to the occupation.

The AAO also notes a discrepancy in the evaluator's conclusions. The evaluator indicates that the beneficiary has an undetermined number of credit hours as an undergraduate transferable toward a United States university in physical chemistry. The beneficiary's transcripts support this conclusion. The evaluator then states that the beneficiary continued her studies and was awarded a postgraduate diploma in management and computers from the Anna Institute of Management in 1993 and in financial management from the Indira Gandhi Open University in 1999. There are no records from the Anna Institute of Management indicating any studies in management and computers. The evaluator concludes based on the beneficiary's educational record that the beneficiary has the equivalent of a master's degree in physical chemistry. The beneficiary did not complete any post diploma work in physical chemistry. The record does not support the evaluator's conclusion. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

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 occupation<sup>1</sup>;
- (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.

Taken collectively, the beneficiary's degrees, diplomas, and transcripts do not establish equivalence to a bachelor's degree in computer science, software engineering, information technology, or a related field. None of the beneficiary's coursework such as organic chemistry, inorganic chemistry, zoology, physics, English, Tamil, and management is associated with a computer science or software engineering discipline or a specialized area of study directly related to the proposed position. The beneficiary's coursework is associated with chemistry and management studies.

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 an employment verification letter from Binny Limited (India) for the dates of employment from November 6, 1995, to January 23, 1998, as a computer systems officer and another letter from Broadline Computer Systems (India), with dates of employment from November 1998 to December 9, 1999, as programmer. The letters did not provide any list or description of the beneficiary's duties in these positions nor did they indicate that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

Based on the evidentiary record, the petitioner has not demonstrated that the beneficiary's training and/or work experience included the theoretical and practical application of specialized knowledge required by the software engineer position or that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in software engineering. Further, there is insufficient evidence to determine whether M. Smabandham would be recognized as an expert in information systems, computer science, or a related field. The evaluator did not provide his qualifications as an expert; no resume or other evidence was attached to the evaluation. Thus the AAO cannot determine whether the beneficiary has recognition of expertise.

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<sup>1</sup> *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).

The AAO now turns to counsel's assertion that this petition must be approved because, in the past, the director approved an H-1B petition filed by the petitioner on the beneficiary's behalf. As stated previously, the evidence in the record does not support a finding that the beneficiary is qualified for the proposed position. The director's decision to approve another petition has no bearing on the AAO's decision in this matter, as service center directors' decisions are not binding on this office. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). The AAO does note, however, that if the facts in the record relating to the second petition were similar to the facts in this record, the director's approval of the petition would constitute gross error. The AAO is not required to approve a petition where eligibility has not been demonstrated, merely because of another approval that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988).

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.