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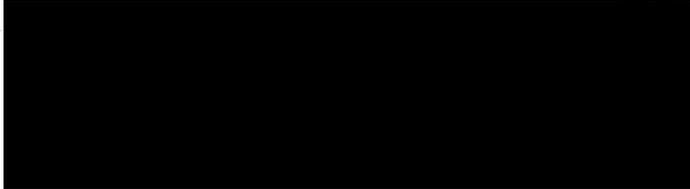


U.S. Citizenship
and Immigration
Services

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JAN 21 2005



FILE: EAC 02 260 52820 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[Redacted]

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.

for
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 is corporation doing business in investment and real estate. In order to employ the beneficiary as a programmer analyst, the petitioner 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, 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition on the basis that the petitioner had failed to establish that the beneficiary is qualified to serve in a computer-related specialty occupation.

The director's decision made significant mention of the fact that, at the time of his decision, the evidence of the beneficiary's credentials consisted only of educational records related to the field of music, a letter from a former employer relating to the beneficiary's working as a programmer analyst for approximately three years, and an "illegible" and "untranslated" copy of "what appears to be a school transcript for attendance at a foreign school."

On appeal, counsel submits for the first time a copy of a document that, according to the accompanying translation, is a diploma for a master's degree in computer science issued by Paris University, France. Counsel submits no brief or additional evidence, but, at section 3 of the Form I-290B, he states:

See copy of degree. The computer industry and music industry work on projects together, such as MP3, web files, downloading & storing of music.

On consideration of the entire record and the totality of the evidence, the AAO has concluded that the director was correct in denying the petition. The evidence of record is insufficient to satisfy the beneficiary qualification requirements of 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). Accordingly, the appeal will be dismissed and the petition will be denied.

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.

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 under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) 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.

It should be noted that the AAO has not considered the aforementioned copy of the untranslated foreign document. The regulation at 8 C.F.R. § 103.2(b)(4) states:

Translations. Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Next, the copy of the diploma presented as evidence of a master's degree in computer science from a foreign university is insufficient to establish educational credentials for the purposes of this petition. Such evidence of foreign university study has no merit unless it is submitted with the transcript of the associated coursework, an English translation of the same, and a proper evaluation of the U.S. educational equivalency of the coursework by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), above.

The director was correct to discount the January 21, 2003 letter regarding the beneficiary's approximately three years of employment as a programmer analyst, for the letter, which is limited to generic statements about the beneficiary's general duties, provides no information about the specific tasks that engaged the

beneficiary; the programmer analyst skills and competencies which he had to employ in those tasks; the programmer-analyst related educational credentials of his supervisors, peers, and subordinates; and recognition of the beneficiary's expertise in the field of program analysis. Furthermore, the letter fails to identify the former employer,¹ and it provides no information about the former employer's business and its need for a programmer analyst with at least a bachelor's degree in a specific specialty.

The former employer's letter is insufficient for Citizenship and Immigration Services (CIS) to accord the beneficiary any credit based on his employment or training. For CIS to apply the formula of three years of specialized training and/or work experience for each year of college-level training the alien lacks, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) explicitly requires that the record clearly demonstrate that the alien's training and/or work experience included three characteristics: (1) the theoretical and practical application of specialized knowledge required by the specialty occupation; (2) work with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; (3) 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 occupation²;
- (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.

Finally, on the basis of the record of proceeding, the director was correct in determining that the evidence about the beneficiary's musical education had no evidentiary impact. There is no evidence demonstrating the relationship of the beneficiary's musical knowledge to the proffered position. Counsel's comment on appeal about the interrelation between the computer and music industries has no evidentiary weight. 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). Furthermore, the assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

¹ The only identifying information about the former employer is an apparently French street address and an e-mail address that appears to consist of the first-name initial and the last name of the petitioner's president.

² *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).

Because the petitioner has not established that the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D), the director's decision shall not be disturbed.

The burden of proof in this proceeding 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.