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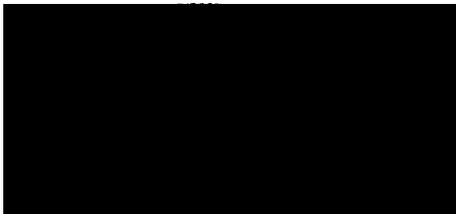
FILE: LIN 04 091 52942 Office: NEBRASKA SERVICE CENTER Date: JUN 28 2005

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

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 an information technology development and consulting firm that seeks to employ the beneficiary as a computer programmer. 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 proffered position. On appeal, counsel states that the beneficiary is qualified for the proffered position.

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

The petitioner is seeking the beneficiary's services as a computer programmer. The petitioner indicates that the beneficiary qualifies for the position based on his education and work experience.

The director determined that the beneficiary is not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree relating to the proposed position.

On appeal, counsel states that the evaluation from the International Credentials Evaluation and Translation Services (ICETS) establishes that the beneficiary is qualified for the proffered position in that his bachelor's degree is the educational equivalent to a U.S. bachelor's degree in engineering. Counsel asserts that this degree is relevant for a computer programmer position, and that the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) indicates:

[E]mployers using computers for scientific or engineering applications usually prefer college graduates who have degrees in computer or information science, mathematics, engineering, or the physical sciences.

Counsel states that in prior cases the AAO had cited to the above passage in the *Handbook*, and that the AAO recognizes that a bachelor's degree in engineering is appropriate for a computer programmer position. Counsel maintains that the beneficiary will work on programs that have engineering applications.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform the proposed position.

The record contains a copy of the beneficiary's transcript and bachelor of technology degree in chemical engineering from the Indian Institute of Technology; employment verification letters; SAP certificate; and credentials evaluation from ICETS, which indicates that the beneficiary's bachelor's degree is the equivalent to a U.S. bachelor's degree in engineering.

The beneficiary does not hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university. 8 C.F.R. § 214.2(h)(4)(iii)(C)(I).

To establish the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C), the petitioner must demonstrate that the beneficiary holds 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. ICETS determined that the beneficiary holds a foreign degree that is equivalent to a U.S. baccalaureate in engineering. On appeal, counsel references a passage in the *Handbook*, which reports that employers using computers for scientific or engineering applications usually prefer college graduates who have degrees in engineering and as well as other disciplines. However, the evidence in the record is insufficient to establish that the beneficiary would work on engineering applications. Counsel's April 16, 2004 letter indicates that the beneficiary will work on programs that have engineering applications; nonetheless, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The document explaining the petitioner's services describes them in business and information systems environments; they do not seem to relate to engineering applications. In the job description, the petitioner does not describe the beneficiary as working on engineering applications. The

petitioner submits job postings to establish that a bachelor's degree in engineering is required for a computer programmer. However, the postings have requirements that differ from the proposed position, and as a consequence of this, the duties in the postings differ from the proposed position. [REDACTED] for example, requires knowledge of [REDACTED] Oracle tools, [REDACTED] and [REDACTED] requires knowledge of SQL Server 200 and VB/VBA, Java, XML, and C++ [REDACTED] requires knowledge of Oracle and C++; and [REDACTED] requires knowledge of [REDACTED] and [REDACTED]

For the reasons discussed above, the evidence in the record is inadequate to establish that a bachelor's degree in engineering is required for the proposed position. Because the *Handbook* reports that computer programmers hold college degrees in areas such as computer science, mathematics, or information systems, and the beneficiary's degree is unrelated to these disciplines, 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 [REDACTED] on [REDACTED]
- (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.

No evidence in the record establishes the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1), (2), (3), or (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:

- (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 beneficiary possesses the educational equivalent to a U.S. bachelor's degree in chemical engineering. The beneficiary's transcript reveals that only two courses relate to computer programming: computation and high speed computation methods. The beneficiary also holds a SAP certificate, but it does not indicate the length of study required for certification. Collectively, the beneficiary's education and training are insufficient to establish equivalence to a U.S. baccalaureate degree required by the specialty occupation, which in this case is a baccalaureate degree in computer science, mathematics, information systems, or a directly related degree.

The beneficiary has prior work experience with [REDACTED] and [REDACTED]. The employers indicate, in their respective employment letters, the beneficiary's job title and dates of employment, but they do not describe the beneficiary's duties and whether the work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. No evidence establishes that the beneficiary has recognition of expertise.

For the reasons discussed above, the evidence in the record is inadequate to establish the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

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).

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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.