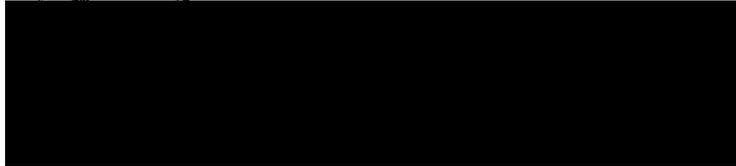


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FILE: LIN 04 042 52452 Office: NEBRASKA SERVICE CENTER Date: OCT 21 2005

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:  
[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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The 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 a computer programming and software development company that seeks to employ the beneficiary as a systems analyst. 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, finding that the beneficiary does not qualify to perform the duties of a specialty occupation.

On appeal, counsel contends that the beneficiary does qualify to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's RFE response and supporting documentation; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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.

In making its determination as to whether the beneficiary qualifies to perform the duties of a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C), as described above. The beneficiary did not earn a degree from a United States institution of higher education, so he does not qualify under the first criterion.

Nor does the beneficiary qualify under the second criterion, which requires a demonstration that the beneficiary's foreign degree has been determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university. Counsel submitted an evaluation of education and experience from the Multi-national Education & Information Services, Inc. (MEIS), dated May 19, 2004. While the MEIS evaluator determined that the combination

of the beneficiary's foreign education and experience are equivalent to a bachelor's degree in business administration and computer science and a master's degree in business administration, this evaluation does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). In order to qualify under this criterion, the evaluation must be based solely upon the beneficiary's foreign degree; a credentials evaluation service may evaluate educational credentials only. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

As such, the AAO may only consider the portion of this evaluation that pertains to the beneficiary's foreign education. Based upon its evaluation of the beneficiary's foreign education alone, the MEIS evaluator determined that the beneficiary's foreign education is equivalent to five years of academic study in business administration from an accredited college in the United States.

In order to qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), the beneficiary's degree must be in the field required by the specialty. The *Handbook* indicates that many systems analyst positions require a bachelor's degree in computer science, information science, or management information systems. Thus, the beneficiary's five years of academic study in business administration do not qualify under this criterion.

The record does not demonstrate, nor has counsel contended, that the beneficiary holds an unrestricted state license, registration or certification to practice the specialty occupation, so he does not qualify under the third criterion, either.

The fourth criterion, set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), requires a showing that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty.

Thus, it is the fourth criterion under which the petitioner seeks to classify the beneficiary's combination of education and work experience. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree is 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.

The beneficiary's combination of education and previous experience do not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Although the MEIS evaluation does state that the combination of the beneficiary's education and experience is equivalent to a bachelor's degree in business administration and computer science, as well as a master's degree in business administration, there has been no showing that the MEIS evaluator has the authority to grant college-level credit for training and/or experience in this field at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. As noted previously, a credentials evaluation service may evaluate educational credentials only. 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Therefore, the MEIS evaluation of education and work experience cannot be accepted for the purpose of establishing the beneficiary's educational credentials.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), which requires that the beneficiary submit 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).

Nor does the beneficiary satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As was the case under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), the beneficiary is unqualified under this criterion because the MEIS evaluation was based upon both education and experience. In order to qualify under this criterion, the MEIS evaluation would have to have been based upon foreign educational credentials alone. The AAO may accept the portion of the evaluation based upon the beneficiary's foreign education alone, which indicates that it is equivalent to five years of academic study in business administration. As discussed previously, this degree is insufficient under the *Handbook* for systems analysts.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), which requires that the beneficiary submit 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.

The AAO next turns to the fifth criterion. 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.

Counsel's submission traces the beneficiary's work experience from February 1999 onward, for a period of four years and nine months (the beneficiary entered the United States in November 2003). As provided by regulation, the formula utilized by CIS is three years of specialized training and/or work experience for each year of college-level training that the alien lacks. A baccalaureate degree from a United States institution of higher education would require four years of study. The beneficiary has the equivalent of a four-year university degree, for which the AAO will recognize two years of academic study in general courses leading to a four-year degree. The beneficiary must therefore demonstrate at least six years of qualifying work experience in order to qualify for an equivalency in computer studies.

As the beneficiary does not possess the requisite six years of work experience in the field, the AAO need not determine whether his previous work experience satisfies the criteria set forth in subsections (i), (ii), (iii), (iv), or (v) of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The fifth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(D) has not been satisfied.

The AAO notes further that the evidence of the beneficiary's qualifying work experience in the record does not establish that the work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation, that it was gained while working with peers, supervisors, or subordinates who held a degree or its equivalent in accounting, and that he achieved recognition of expertise in the specialty.

As such, the beneficiary is not qualified to perform the duties of the specialty occupation.

The AAO notes that in his request for evidence, the director requested clarification regarding doubts that arose during the service center's review of the petition. For example, the director noted that the beneficiary was granted a single-entry B-1/B-2 visa, valid for three months, so that the beneficiary could attend a tile and stone show in Las Vegas, Nevada. The director stated the following:

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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 Service also notes that the information given in the statement does not corroborate the beneficiary's assertions on his resume. It is also unclear why, if the beneficiary was working as a software engineer in a technology corporation, he was issued his B-1 business visitor visa to attend a tile and stone show, which does not appear related to his alleged occupation.

However, neither counsel nor the petitioner addressed this issue. The purpose of a request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner has not established that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the AAO will 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.