



U.S. Citizenship
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FILE: EAC 04 178 50703 Office: VERMONT SERVICE CENTER Date: **APR 12 2006**

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 a computer software development and consultancy firm 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 is not qualified for the proffered position. On appeal, counsel submits additional evidence.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

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 have completed 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) the Form I-129 and supporting documentation; (2) the director's denial letter; and (3) the Form I-290B and additional evidence. The AAO reviewed the record in its entirety before issuing its decision.

The director found the submitted educational evaluation and evidence regarding the beneficiary's work experience and training unpersuasive in establishing that the beneficiary is qualified for the proposed position, a systems analyst.

On appeal, the petitioner states that the beneficiary is qualified for the proposed position, which the petitioner asserts is analogous to a software engineer as described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). According to the petitioner, the *Handbook* indicates that a degree in computer science, software engineering, or computer information systems is appropriate for this occupation. The petitioner states that the educational evaluation was based on the beneficiary's bachelor's degree, employment letters, and resume; and that the employment letters should be considered collectively with the resume. The petitioner states that *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972), indicates that the petitioner's statements and the facts in a petition should be properly considered, and rejected only if contradicted by evidence in the record. The petitioner states that the beneficiary's prior positions were computer-related and progressively more responsible over the course of eleven years. The petitioner asserts that the director should have issued a request for additional evidence based on the May 4, 2004 memorandum entitled "Requests for Evidence (RFE)" by Mr. William R. Yates, Associate Director, Operations, before adjudicating the petition.

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

In determining the qualifications for occupations, the AAO routinely consults the *Handbook*. The *Handbook* conveys that a bachelor's degree in computer science, information science, or management information systems (MIS) is appropriate for a systems analyst; and that a bachelor's degree in computer science or software engineering is suitable for a computer software engineer. Based on the *Handbook's* information, the beneficiary must possess a bachelor's degree in computer science, information science, MIS, or software engineering.

The beneficiary does not hold a U.S. baccalaureate or higher degree. The submitted educational evaluation from Dr. [REDACTED] Morningside Evaluations and Consulting, indicated that the beneficiary:

[S]atisfied requirements substantially similar to those required toward the completion of academic studies from an accredited institution of higher education in the United States.

Because the beneficiary's academic studies are not the equivalent of a bachelor's degree in computer science, information science, MIS, or software engineering, 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 U.S. bachelor's degree in computer science or a related field 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.

The submitted evaluation does not establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) as the record does not contain evidence from an accredited university substantiating that Dr. Jelen is 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. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The submitted evaluation fails to establish the beneficiary's qualifications pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Under this criterion, a credentials evaluation service evaluates foreign educational credentials in order to determine equivalency to a U.S. bachelor's or higher degree. With the case here, Dr. ████████ bases his evaluation on the beneficiary's academic studies as well as his work experience and training. To the extent that the evaluation includes work experience and training, it is not persuasive in establishing the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

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 record contains the beneficiary's resume, transcripts, bachelor of commerce degree (cost accounting), employment letters, and certificates relating to training and membership in the Institute of Chartered Accountants of India. Although the training certificate pertains to certification as an application consultant "accounting," it does not list the coursework completed or its length. Considered collectively, the evidence associated with the beneficiary's academic studies and training are insufficient to establish equivalency to a bachelor's degree in computer science, information science, MIS, or software engineering.

The AAO now turns to consider the beneficiary's prior work experience and whether it included the theoretical and practical application of specialized knowledge required by the specialty, which is a computer-related degree. The letter from [REDACTED] (Canada) indicates that the beneficiary was employed there from March 28, 1991 to June 24, 2002 in various positions, and was a general manager at the time of leaving. As a general manager, the beneficiary was charged with "looking after Operations and Information and Finance areas." The AAO finds that the employer does not describe the beneficiary's duties in his other positions with the company, explain what "looking after Operations and Information and Finance areas" entailed, or indicate the period of time the beneficiary spent as a general manager. The letter from [REDACTED] states that the beneficiary worked there from July 21, 1986 to September 7,

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).

1987 as an accountant. The letter from A.F. Ferguson & Co. relays the beneficiary's employment dates, which are from November 1989 to February 1991; it does not describe the beneficiary's title or job duties. Considered collectively, the letters do not convey that the beneficiary's work experience included the theoretical and practical application of specialized knowledge in a field such as computer science.

The AAO notes that none of the letters 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 specific specialty, which is a bachelor's degree in a field such as computer science. In addition, no evidence in the record shows that the beneficiary has recognition of expertise. Dr. Jelen did not submit a resume of his qualifications; thus, no evidence establishes him as a "recognized authority" in the computer field.

The submitted evidence is insufficient to establish that the beneficiary holds the educational equivalent of a bachelor's degree in computer science or a related field, which the *Handbook* indicates is required for the proposed position.

The petitioner indicates that the beneficiary was previously accepted by CIS as qualified to perform the services of a specialty occupation. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

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.