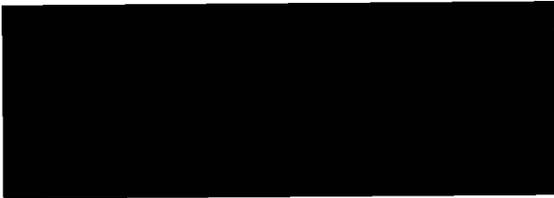


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FILE: EAC 04 253 51911 Office: VERMONT SERVICE CENTER Date: **MAR 27 2006**

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:

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.

for *Michael T. Kelly*
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 programmer-analyst and to classify him 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 a letter and 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 with supporting documentation, including the petitioner's company support letter, a September 2004 foreign academic credentials equivalency evaluation from International Credentials Evaluation and Translation Services (ICETS), and the beneficiary's resume and university transcript; (2) the director's denial letter; and (3) Form I-290B with accompanying brief and additional documentation, including a November 2004 credentials evaluation from ICETS. The AAO reviewed the record in its entirety before issuing its decision.

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 found that the beneficiary's foreign degree in civil engineering was not in a field related to the proposed computer programmer-analyst position. The director further found that the beneficiary's employment history was more closely related to the proposed

position but that the beneficiary's four years of work experience was only equivalent to one year towards a U.S. bachelor's degree in a field related to the proposed position.

On appeal, the petitioner asserts that the beneficiary's bachelor's degree, together with his work experience in computers, is equivalent to a U.S. bachelor's degree in computer science.

Upon a thorough 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. The beneficiary has been determined to hold the equivalent to a United States bachelor's degree in civil engineering. The *Occupational Outlook Handbook (Handbook)* a resource on which CIS routinely relies, indicates that many computer systems analysts hold advanced degrees in technical fields or a master's degree in business administration (MBA) with a concentration in information systems. For systems analyst, programmer analyst, or even database administrator positions, many employers seek applicants who have a bachelor's degree in computer science, information science, or management information systems (MIS). The petitioner has not established that the beneficiary's degree is in a field related to the specialty. Thus, 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 bachelor's 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 a credentials evaluation from ICETS. The ICETS evaluation states that the beneficiary's degree in civil engineering from the University of Delhi is equivalent to bachelor's degree in engineering from an accredited institution of higher education in the United States. Further, the ICETS

evaluation states that the beneficiary's four years and four months work experience in the field of computer science along with his degree in engineering are the equivalent of a bachelor's degree in computer science from an accredited institution of higher education in the United States.

This evidence is not persuasive. The AAO accepts the portion of the evaluation submitted on appeal that concludes that the beneficiary's degree from the University of Delhi is the equivalent of an engineering degree from an accredited university in the United States. An engineering degree, however, is not a degree directly related to the field of computer programming and systems analysis.

The beneficiary's degree in civil engineering from the University of Delhi does not establish equivalence to a United States bachelor's degree in computer science, software engineering, information technology, or a related field. The beneficiary's coursework such as engineering statistics, determinate structural analysis, and fluid mechanics is not associated with a computer science discipline or a specialized area of study directly related to the proposed position. The beneficiary's transcripts indicate that he took one course in computer programming. The beneficiary's coursework is associated with engineering studies.

The AAO does not accept the portion of the evaluation submitted on appeal that evaluates the combination of the beneficiary's work experience, specialized training and education. The evaluator lists the various projects the beneficiary designed and developed and concludes that this work experience, combined with the beneficiary's bachelor's degree, is the equivalent of a bachelor of science degree in engineering and computer science. An evaluator may evaluate foreign credentials only. 8 C.F.R. 214.2(h)(4)(iii)(D)(3). There is no independent evidence in the record to establish that the ICETS evaluator has the authority to grant college-level credit, at an accredited institution, based on an applicant's foreign educational credentials, training, and/or employment experience. The certificates the beneficiary obtained in Microsoft and Java are not equal to a bachelor's degree in computer science.

Thus CIS must determine the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). 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;

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).

- (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 AAO now turns to the beneficiary's work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. The only evidence relating to the beneficiary's work experience consists of an employment verification letter from the beneficiary's current employer in India, HCL Technologies. This letter indicates that the beneficiary is being promoted to the position of senior software engineer, but does not provide any list or description of the beneficiary's duties, nor did the letter indicate that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have bachelor's degrees in computer science or the equivalent.

The record's minimal documentation of the beneficiary's employment history fails to offer the type of evidence necessary to satisfy the fifth criterion, which requires the petitioner to prove that the beneficiary's work experience has included the theoretical and practical application of the specialized knowledge required by management analysts, and that this experience was gained while working with peers, supervisors, or subordinates who have bachelor's degrees in computer science or the equivalent. The record also lacks the documentation necessary for the AAO to determine whether the beneficiary's expertise in computer science has been formally recognized by recognized authorities, professional associations, or the media. Accordingly, the petitioner has not established that the beneficiary has acquired the equivalent of a bachelor's degree in computer science through a combination of education, specialized training, and/or work experience, as required to satisfy the requirements of the fifth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D).

The petitioner has not demonstrated that the beneficiary is qualified to perform the services of a specialty occupation.

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.