

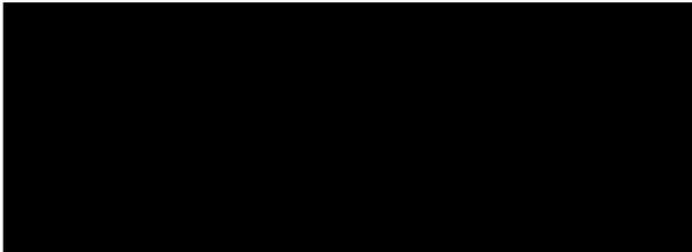


U.S. Citizenship
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Services

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FILE: EAC 04 263 51126 Office: VERMONT SERVICE CENTER Date: MAY 09 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:

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.

Robert P. Wiemann, Chief
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 provides computer services. It seeks to employ the beneficiary as a computer programmer/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 because the beneficiary is not qualified to perform the proffered position. The petitioner submits a timely appeal and additional and previously submitted evidence.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's denial letter; and (3) the Form I-290B, the appeal brief, and supporting evidence. The AAO reviewed the record in its entirety before issuing its decision.

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.

In the denial, the director concluded that the beneficiary does not possess the educational equivalent of a bachelor's degree that is related to the offered position of computer programmer/analyst.

Upon review of the record, the AAO agrees with the director's conclusion that the beneficiary is not qualified for the proposed position.

The evidence in the record does not establish the beneficiary's qualifications for the offered position pursuant to the first two criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C), namely, that the beneficiary hold a U.S. baccalaureate or higher degree required by the specialty occupation from an accredited college or university; or hold a foreign degree determined to be equivalent to a U.S. baccalaureate or higher degree required by the specialty occupation from an accredited college or university. Here, the beneficiary does not possess a U.S. baccalaureate degree in an academic discipline that is directly related to the proposed position; nor does he hold a foreign degree that is deemed equivalent to such a U.S. baccalaureate degree.

The AAO notes that the third criterion 8 C.F.R. § 214.2(h)(4)(iii)(C), that the beneficiary 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, is not a requirement of the offered position.

Now, the AAO will consider the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). To meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D) states that 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 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 evidence in the record does not establish the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Although [REDACTED] states in the educational evaluation that the positions he holds at several academic institutions provide him with the authority to grant college-level credit for training, and/or courses taken at other U.S. or international universities, no independent evidence in the record substantiates that [REDACTED] is an official who has authority to grant college-level credit for training and/or experience in the specialty at a specific university, and that the university has a program for granting such credit based on an individual's training and/or work experience. Thus, the evidence in the record fails to establish the beneficiary's qualifications at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

No evidence establishes the beneficiary's qualifications for the proposed position at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(2) or (4).

To establish the beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), the petitioner is required to provide an evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials. Here, in the educational evaluation from [REDACTED] the evaluator stated that the beneficiary attained the equivalent of a bachelor of science degree in computer information systems from an accredited institution of higher education in the United States. Specifically, the evaluation is based on the beneficiary's three years of academic coursework, training, and work experience. However, 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) indicates that the evaluation must be based solely on the beneficiary's education. Because [REDACTED] includes the beneficiary's education, training, and work experience in finding that the beneficiary holds the educational equivalent of a bachelor of science degree in computer information systems from an accredited institution of higher education in the United States, the educational evaluation fails to establish the beneficiary's qualifications at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

The AAO will now consider the beneficiary's qualifications under 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;

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)

- (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.

Upon a review of the record, the combination of the beneficiary's education, work experience, and training is insufficient to establish the equivalent of a bachelor's degree in a field relating to the proposed position.

According to [REDACTED] the beneficiary's diploma from the Board of Technical Examinations in India is the equivalent to the completion of three years of academic coursework towards a degree from an accredited institution of higher education in the United States. The record contains training certificates that indicate the beneficiary completed computer courses. The certificate from VMCI conveys that the computer courses were conducted from January 2, 2001 to May 4, 2001. Collectively, the training certificates and diploma are not the equivalent of a baccalaureate degree in computer science or a related field.

The beneficiary's work experience, as depicted in letters from former employers, [REDACTED]

[REDACTED] and [REDACTED] fail to establish that the beneficiary's prior positions with these companies involved the theoretical and practical application of specialized knowledge associated with database design. In the letters, these employers do not sufficiently describe the nature of the beneficiary's duties. Only the letter from [REDACTED] which covers the employment period of May 15, 2000 to November 15, 2000, indicates that the beneficiary's prior employment would have involved theoretical and practical application of specialized knowledge in database and functional screen design, which is relevant to the position offered here. Nevertheless, this letter, like the others, does not state that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. Further, the AAO notes that no evidence in the record establishes that the beneficiary has recognition of expertise in the specialty by two recognized authorities in the field of computer science. [REDACTED] did not submit a resume detailing his qualifications.

For the reasons discussed above, the petitioner fails to establish the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

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).

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.