

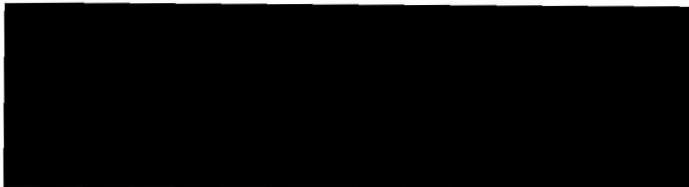
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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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OR

NOV 07 2006

FILE: EAC 04 250 53705 Office: VERMONT SERVICE CENTER Date:

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, 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 sustained. The petition will be approved.

The petitioner is a software consulting and development company that seeks to employ the beneficiary as a programming 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. On appeal, counsel submits a brief and additional evidence.

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, the brief, and additional documents. 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.

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 director found that the beneficiary is not qualified for the proffered position because the beneficiary's education, experience, and training are not equivalent to a baccalaureate degree with a major in computer science or a field that is directly related to the proposed position.

On appeal, counsel submits two educational evaluations, which she contends establish that the beneficiary qualifies for the offered position.

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

To establish the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), the petitioner must submit 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. The record of proceeding contains an educational evaluation from Professor [REDACTED] who is employed at Princeton University's Computer Science Department. This evaluation states that the beneficiary holds the educational equivalent of a bachelor of science degree, with a dual major in computer information systems and business administration, from an accredited institution of higher education in the United States. The letter from the Professor and Chair of the Department of Computer Science at the university states that Professor [REDACTED] has the authority to grant college level credit for training and experience in computer science at the university. The letter further states

that university faculty use this experience in the course of advising advanced transfer students in “assessing the credentials of students from other universities and from other nations for the purposes of admissions and granting credit, and in the development of university policies and programs in the areas of general education and educational equivalencies.” The AAO finds that the letter from the Professor and Chair of the Department of Computer Science does not indicate that Princeton University has a program for granting credit based on an individual’s training and/or work experience. Thus, these letters fail to establish the beneficiary’s qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).

The record also contains an educational evaluation from Professor [REDACTED] who is employed at Medgar Evers College of the City University of New York School of Business. Professor [REDACTED] evaluation states that the beneficiary holds the educational equivalent of a bachelor of science degree, with a dual major in computer information systems and business administration, from an accredited institution of higher education in the United States. The letter from [REDACTED] who is also employed at the university, states that Professor [REDACTED] has “the authority to make determinations concerning the granting of college-level credit for training and experience in computer science and engineering and computer information systems courses at The City University of New York.” [REDACTED] states that the university’s policy is not specified in a course catalog; however, he confirms that the university has “a program for granting college-level credit based on a candidate’s foreign educational credentials, training, and/or employment experience.” Based on the submitted evaluation from Professor [REDACTED] the letter from [REDACTED] the beneficiary’s baccalaureate degrees and transcripts, and letters from her prior employers, which are contained in the record of proceeding, the AAO finds that the petitioner established that the beneficiary is qualified to perform the offered position pursuant to the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.