



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



PUBLIC COPY

02

JUL 12 2007

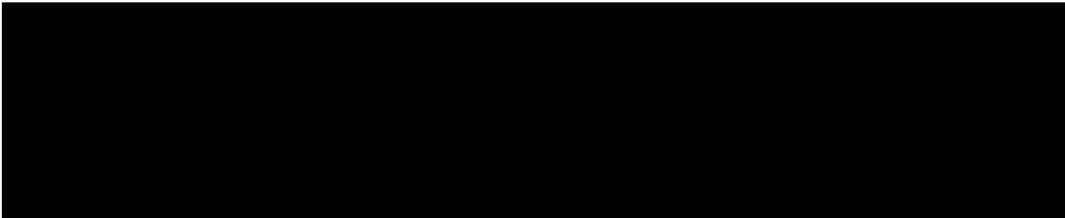
FILE: EAC 05 139 52539 Office: VERMONT SERVICE CENTER Date:

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 F. 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 is an information technology consulting business that provides systems and business solutions to business clients in the United States. It seeks to employ the beneficiary as a 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 determining that the record failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation.

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: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) counsel's response to the director's request; (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.

The petitioner is seeking the beneficiary's services as a programmer analyst. The petitioner indicated that the beneficiary is a qualified candidate for the job because he possesses a foreign Bachelor of Science degree in mathematics, a foreign "Master of Computer Applications Diploma," and related training and employment.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, training, and employment experience did not qualify him for a programmer analyst position. On appeal, counsel states, in part, that the beneficiary is qualified for the position because he holds a master's degree in business administration, the curriculum of which included four courses related to information technology. Counsel states further that the beneficiary also holds the equivalent of a bachelor's degree in computer information systems based on his diplomas and certificates in the field of information technology. Counsel also states that the beneficiary has seven years of progressively responsible work experience in the field of information technology.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in a computer-related field. The beneficiary holds a foreign bachelor's degree in commerce. The record also contains a "Master of Business Administration" provisional certificate issued to the beneficiary by a foreign institution. The beneficiary, however, does not hold a baccalaureate degree from an accredited U.S. college or university in a computer-related field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in a computer-related field of study. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

The record contains the following documentation pertaining to the beneficiary's qualifications:

- A credentials evaluation from ITES, Inc., dated October 24, 2005, based on the beneficiary's foreign education, training, and work experience, concluding that the beneficiary holds the U.S. equivalent of a master's degree in business administration and a bachelor's degree in computer information systems;
- A credentials evaluation from ICETS, undated, based on the beneficiary's foreign education, concluding that the beneficiary holds the U.S. equivalent of a bachelor's degree in business administration;
- Various certificates and other evidence of computer-related training completed by the beneficiary;
- A letter, dated August 31, 1993, from the Indian business Aruna Sugars Finance Limited, certifying that the beneficiary worked from May 11, 1990 to August 31, 1993, as a "Marketing Officer";
- A letter, dated August 3, 1999, from the Indian business India Cements Capital & Finance, Ltd., certifying that the beneficiary worked in the marketing department from May 11, 1990 to

August 31, 1993, handling the marketing of financial services such as “hire[,] purchase, lease, bills discounting . . .”;

- A letter, dated October 16, 1995, from the senior executive of the human resources department for the Indian business Nagarjuna Finance Limited, certifying that the beneficiary worked as a field officer from September 3, 1993 to July 26, 1995;
- A service certificate, dated July 10, 1997, from the managing director of the Indian business Alsa Global Finance and Securities, Ltd., indicating that the beneficiary worked as an assistant manager of operations from July 14, 1995 to July 10, 1997;
- A letter, dated July 23, 1997, from the Indian business Encore Infosys, Ltd., appointing the beneficiary as a “Senior IT Consultant – ERP” and a follow-up document certifying that the beneficiary worked at the said business from August 1997 to January 31, 2002;
- A letter, dated February 11, 2002, from the resource manager of Navo Infotech Pvt. Ltd., appointing the beneficiary as a “Functional Consultant – SAP”, and a certificate of experience, dated August 10, 2004, certifying that the beneficiary worked from February 4, 2002 to the present as a “Business Associate as Functional Consultant in SAP FICO” in the said business;
- A letter, dated August 11, 2004, from the managing director of the Indian business iBilt Technologies, Ltd., appointing the beneficiary to the position of “SAP-FICO Functional Consultant”; and
- A letter, dated January 10, 2005, from the senior manager of human resources of the Indian business Mascon Global, Ltd., offering the beneficiary a consulting position.

When determining a beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the AAO relies upon the five criteria specified at 8 C.F.R. § 214.2(h)(4)(iii)(D). A beneficiary who does not have a degree in the specific specialty may still qualify for an H-1B nonimmigrant visa based on:

- (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.

Although the record contains two credentials evaluations, as listed above, both evaluations are based, in part, on the beneficiary's foreign master's degree in business administration. The evidence of record, however, contains only a "provisional certificate" of the beneficiary's master's degree in business administration. The record contains no explanation for this deficiency. Thus, the evaluators' conclusions regarding the equivalency of the beneficiary's foreign master's degree carry no weight in these proceedings. Citizenship and Immigration Services (CIS) uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). As discussed above, although the evaluator from ITES, Inc. concludes that the beneficiary's foreign education and computer-related training are the U.S. equivalent of a master's degree in business administration and three years of academic coursework towards a bachelor's degree in computer information, the record contains only a "provisional certificate" as evidence of the beneficiary's master's degree in business administration. Thus, the evaluator's conclusion that the beneficiary's foreign education combined with his computer-related training are the U.S. equivalent of a master's degree business administration and three years of academic coursework towards a bachelor's degree in computer information, carries no weight in these proceedings. Moreover, the petitioner does not explain how two evaluators reviewing the same academic information could reach such disparate opinions regarding the beneficiary's claimed foreign formal education. As observed earlier, the credentials evaluation prepared by ICETS and submitted with the petition indicates the beneficiary's foreign education is equivalent to a bachelor's degree in business administration. The credentials evaluation prepared by ITES, Inc. and submitted on appeal indicates the beneficiary's foreign academic coursework is the equivalent of a master's of business administration degree and three years of academic coursework towards a bachelor's degree in computer information systems from an accredited college or university in the United States. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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 documentation, including employment letters, indicating that the beneficiary has computer-related work experience. The record also contains training certificates and other evidence of computer-related training. The record, however, contains insufficient evidence that this documentation is equivalent to a baccalaureate degree in a computer-related field.

Upon review, the record does not evidence that the beneficiary's prior work experience included the theoretical and practical application of specialized knowledge required by the specialty. The beneficiary's duties for his prior employers do not involve the theoretical and practical application of a programmer analyst. Only one of the employment letters, that from [REDACTED], contains a description of the beneficiary's duties. A review of these duties, which include, in part, "system analysis and program flow for Deposits, Accounting, Finance, Lending and Shares Accounting"; "Development & Design of Internal control system and relevant documents including stationery for easy flow of data input"; and "Co-Ordinate with Software professionals for coding and developing the program with a definite time frame", does not establish that they exceed in scope, specialization, or complexity those usually performed by computer programmers, an occupational category for which the Department of Labor's *Occupational Outlook Handbook* indicates no requirement for or usual association with a baccalaureate or higher degree in a specific specialty. In addition, the description of these duties is too general to demonstrate that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge. Further, the foreign employers do not indicate 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. The record also contains no evidence of the recognition of expertise required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

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).

Likewise, the training certificates submitted are insufficient to establish that the beneficiary's training in computer-related seminars is comparable to academic courses taken at a four-year university that are a realistic prerequisite to attaining a bachelor's degree in a specific specialty in computer science or a related field. The record does not contain sufficient information regarding the seminars attended by the beneficiary to evaluate the training as more than vocational coursework that results in technical skill but does not include the theoretical knowledge attained through a bachelor's level course of study at an accredited university in the United States.

In short, the record provides no basis for disturbing the director's decision. The petitioner failed to establish that the beneficiary is qualified to perform services in a specialty occupation according to the standards of 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

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.

Beyond the decision of the director, the petitioner has provided no contracts, work orders or statements of work describing the duties the beneficiary would perform for its clients and thus has also failed to establish that the proffered position is a specialty occupation. The court in *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000) held that for the purpose of determining whether a proffered position is a specialty occupation, the petitioner acting as an employment contractor is merely a "token employer," while the entity for which the services are to be performed is the "more relevant employer." The *Defensor* court recognized that evidence of the client companies' job requirements is critical where the work is to be performed for entities other than the petitioner. The court held that the legacy Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. As the record does not contain any documentation that establishes the specific duties the beneficiary would perform under contract for the petitioner's clients, the AAO cannot analyze whether these duties would require at least a baccalaureate degree or the equivalent in a specific specialty, as required for classification as a specialty occupation. Accordingly, the petitioner has not established that the proposed position qualifies as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(A) or that the beneficiary would be coming temporarily to the United States to perform the duties of a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(1)(B)(I). For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving

eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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.