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02

JUN 29 2007

FILE: EAC 05 214 51748 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:

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
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 develops, markets, provides support of software systems, and provides consulting and information technology services. It seeks to employ the beneficiary as a computer programmer. Accordingly, the petitioner 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).

On March 1, 2006, the director denied the petition determining that the record did not establish that the beneficiary is qualified to perform services in a specialty occupation. On appeal, the petitioner asserts the beneficiary is qualified to perform services in the computer field and submits a new evaluation of the beneficiary's academic education and work experience and an April 3, 2006 letter from the beneficiary's previous employer.

The record of proceeding before the AAO contains: (1) the July 27, 2005 Form I-129 and supporting documentation; (2) the director's November 8, 2005 request for further evidence (RFE); (3) the petitioner's December 15, 2005 response to the director's request; (4) the director's March 1, 2006 decision denying the petition; and (5) the Form I-290B and documentation in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The issue in this matter is whether the petitioner has established that the beneficiary is qualified to perform the duties of a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)
 - (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) 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, the 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 a July 25, 2005 letter submitted in support of the petition, the petitioner listed the duties of the position offered to the beneficiary as:

1. Plan, develop, test and document computer programs applying knowledge of programming techniques and computer systems;
2. Evaluate user request for new or modified program, such as for financial or human resource management to determine feasibility, cost and time compatibility with current system, and computer capabilities;
3. Consult with user to identify current operating procedures and clarify program objectives;
4. Prepare flow charts and diagrams to illustrate sequence of steps program must follow and to describe logical operations involved;
5. Provide technical assistance to program user[.]

The petitioner stated that the beneficiary is well versed with various computer applications, hardware, software and platforms including Netware, Windows NT, Windows 2002, Oracle, SAP ABAP4/ and Windows XP etc. The petitioner provided a July 6, 2005 evaluation prepared by The Knowledge Company. The evaluator concluded that based on the beneficiary's course completion certificate in engineering that the beneficiary had obtained the equivalent of a bachelor's of engineering degree from an accredited university in the United States. The record also includes a copy of the beneficiary's transcript from the University of Madras and certificates of course completion in the field of aeronautical engineering; certificates showing the beneficiary had completed a three-month course in Advanced Java Programming, a course in Internet Fundamentals, HTML, JavaScript, DHTML, Java, and a two-week course in ASP; and a November 17, 2004 letter from the beneficiary's previous employer indicating the beneficiary had worked as an ABAP/4 maintenance engineer/developer for two and one-half years for the company.

The director, in a November 8, 2005 RFE, noted that the beneficiary had earned a four-year degree in Aeronautical Engineering but that the degree did not appear to qualify the beneficiary to perform the duties of a computer programmer. The director observed that the beneficiary could be qualified to perform services in a specialty occupation through a combination of education, specialized training, and/or work experience in

areas related to the specialty. The director specifically requested that the petitioner provide 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 that has a program for granting such credit based on an individual's training and/or work experience.

In a December 15, 2005 response, the petitioner noted that the beneficiary had been "involved in [a] number of highly technical projects and performed extensive coding, analysis and system study" for companies like his previous employer, Galaxy Infosys in India. The petitioner indicated that the beneficiary's background in aeronautics helped him in developing solutions through SAP MM and ABAP development. The petitioner resubmitted the July 6, 2005 credentials evaluation.

On March 1, 2006, the director denied the petition determining that the evidence submitted with the initial filing and in response to the director's RFE failed to establish that the beneficiary qualified for the position offered. The director observed that the petitioner had not submitted the requested evaluation of the beneficiary's education and experience and that the beneficiary's degree in aeronautical engineering did not qualify him to perform the specialty¹ occupation of computer programmer.

On appeal, the petitioner submits an April 24, 2006 credential evaluation prepared by International Credential Evaluators, Inc. The evaluator assesses the beneficiary's formal education as equivalent to a bachelor's of science degree in engineering from an accredited university in the United States. The evaluator also notes that the beneficiary worked as a "programmer" and based on a letter(s) from [REDACTED], India, indicating the beneficiary's duties and the duration of the work performed for Galaxy Infosys, the evaluator opined that the beneficiary had gained one year of degree credits towards a bachelor's degree program in computer programming. The evaluator concluded that the beneficiary had obtained the equivalent of a bachelor's of science degree in engineering with course work in computer programming from an accredited university in the United States.

The petitioner also submits one additional certificate showing the beneficiary had completed a course in UNIX, C, C++ in March 2001 and Galaxy Infosys March 4, 2002 offer of employment to the beneficiary for the position of software consultant.

The AAO finds that when attempting to establish that a beneficiary has the equivalent of a degree based on his or her combined education and employment experience under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), a petitioner may not rely on a credentials evaluation service to evaluate a beneficiary's work experience. A credentials evaluation service may evaluate only a beneficiary's educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). To establish an academic equivalency for a beneficiary's work experience, a petitioner must submit an evaluation of such experience from an official who has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university that has a program for granting such credit. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(2). The petitioner failed to submit such evidence, despite the director's request in the RFE. The Department of Labor's *Occupational Outlook Handbook (Handbook)*, the

¹ The AAO finds in this matter that the description of the proffered position's duties, although tracking the language of the Department of Labor's *Occupational Outlook Handbook* regarding computer programmers, is insufficient to establish that the proffered position is a specialty occupation.

resource on which the AAO routinely relies for information regarding the education and training required for particular occupations, does not report that an engineering degree is among the degrees usually held by computer programmers. Instead, it indicates that such individuals hold degrees in computer science, information science, or management information systems. Thus, the record fails to demonstrate that the beneficiary holds the equivalent of a baccalaureate degree in a field directly related to the proffered position. *See* 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

As the petitioner has not submitted documentary evidence establishing that the beneficiary holds a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university in the United States, the petitioner has not met the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(1). The occupation does not require licensing or certification; thus the petitioner may not establish the beneficiary's qualifications under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(3). Neither does the record contain documentary evidence that the beneficiary has received sufficient specialized training, and/or progressively responsible experience, or recognition of expertise as a computer programmer through progressively responsible positions directly related to the work of a programmer analyst. 8 C.F.R. § 214.2(h)(4)(iii)(C)(4); 8 C.F.R. § 214.2(h)(4)(iii)(D).²

The petitioner has not submitted argument or documentation on appeal sufficient to overcome the director's decision on this issue. The petitioner has not established that the beneficiary has the requisite qualifications to perform the duties of a specialty occupation. For this reason, the petition will not be approved.

Beyond the decision of the director, and as footnoted above, the petitioner has not provided a detailed description of the beneficiary's duties. The petitioner cannot repeat portions of the generalized descriptions found in the *Handbook* in order to establish a position as a specialty occupation. Such a generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. In the instant matter, the petitioner has offered no description of the duties of its proffered position beyond the generalized outline it provided at the time of filing. It has not detailed the actual work to be performed for this position rather than describing the occupation. It cannot, therefore, establish that the position meets any of the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). For this additional reason, the petition will be denied.

² The AAO has reviewed the letters submitted by the beneficiary's previous employer and has reviewed the certificates of courses completed relating to the computer industry. However, the letter from the beneficiary's prior employer does not provide a detailed description of the beneficiary's duties and does not establish that the beneficiary's training and/or work experience has included the theoretical and practical application of the specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. Neither does the petitioner provide credible information that the seminars the beneficiary attended are equivalent to courses taken at the university level in subject matter or duration. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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. 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. Accordingly, the AAO will not disturb the director's denial of the petition.

ORDER: The appeal is dismissed. The petition is denied.