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FILE: EAC 05 221 50895 Office: VERMONT SERVICE CENTER

Date: **APR 03 2008**

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
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the Vermont Service Center on November 6, 2005. A Notice of Intent to Revoke (NOIR) was thereafter issued on November 24, 2006. The petitioner made timely response to the NOIR. The director revoked approval of the Form I-129 petition by decision dated March 8, 2007. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be revoked.

The petitioner is a software development and consulting company. It seeks to employ the beneficiary as a software engineer, and endeavors 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 notified the petitioner of his intent to revoke the form I-129 petition following receipt of a memorandum, dated April 20, 2006, from the American Consulate General's office in Chennai, India. That memorandum states that the beneficiary's past education and work experience did not qualify him to perform the duties of the proffered position. In response to the director's NOIR, the petitioner provided evidence of the beneficiary's past education, training and work experience, stating that the beneficiary was qualified to perform the duties of the offered position. The director considered the documentation submitted in response to the NOIR and found that the petitioner had failed to overcome the stated grounds of revocation. The director then revoked approval of the petition.

Pursuant to 8 C.F.R. § 214.2(h)(11)(B)(iii)(5), the director may revoke an H-1B petition if approval of the petition violated paragraph (h) of 8 C.F.R. § 214.2, or involved gross error. In this instance, approval of the petition was in violation of paragraph (h) of the cited regulation in that the record did not establish that the beneficiary was qualified to perform the duties of the proffered position in accordance with the regulations at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). The petitioner was given due and proper notice of the director's intent to revoke the petition. The petitioner responded to the notice. The director then appropriately revoked the Form I-129 petition on the above stated grounds.

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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and 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.

The offered position is that of a systems analyst. The U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* notes that while there is no universally accepted way to prepare for a job as a systems analyst, computer scientist, or database administrator, most employers place a premium on some formal college education. A bachelor's degree is a prerequisite for many jobs, however; some jobs only require a

2-year degree. In this instance, the director denied the petition because the beneficiary did not qualify to perform the duties of a specialty occupation, not because the position did not qualify as a specialty occupation. Thus, it is implicit in the director's decision that the proffered position qualifies as a specialty occupation, and that the offered position necessarily requires a degree in a specific specialty. The *Handbook* notes that for systems analyst, programmer-analyst, and database administrator positions, many employers seek applicants who have a bachelor's degree in computer science, information science, or management information systems (MIS). MIS programs are usually part of a business school or college and differ considerably from computer science programs, emphasizing business and management-oriented course work and business computing courses. Employers are increasingly seeking individuals with a master's degree in business administration with a concentration in information systems as more firms move their business to the Internet. Other degrees are also deemed acceptable depending on an applicant's prior training and/or experience.

The petitioner submitted two credentials evaluations from credentials evaluation services to establish that the beneficiary is qualified to perform the duties of the proffered position. The evaluation reports state the following:

An evaluation from the Trustforte Corporation dated October 16, 1998;

1. The beneficiary's degrees from Nagarjuna University and Bhopal University are equivalent to a bachelor's degree in chemistry from an accredited institution of higher learning in the United States;
2. The beneficiary earned a certificate from the Centre for Computer Information and Training on March 15, 1995. The evaluator found that this training was equivalent to university level training in the United States in the field of Computer Science;
3. The evaluator concluded that the beneficiary's foreign education is equivalent to a bachelor's degree in chemistry and computer science from an accredited institution of higher education in the United States;

• An evaluation from Morningside Evaluations and Consulting;

1. The beneficiary's degrees from Nagarjuna University and Bhopal University are equivalent to a bachelor's degree in chemistry from a regionally accredited university in the United States; and
2. The beneficiary's past education and work experience is equivalent to a bachelor's degree in computer information systems from a regionally accredited college or university in the United States.

It cannot be determined from the record that the beneficiary's degrees from Nagarjuna University and Bhopal University are sufficiently related to the duties of the proffered position to qualify the beneficiary to perform the duties of the position. As noted above, the beneficiary's foreign education from these universities is equivalent to a degree in chemistry from an accredited institution of higher learning in the United States. That degree is not closely related to the duties of a software engineer and will not qualify the beneficiary to perform the duties of the offered position under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

The petitioner also seeks to qualify the beneficiary pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). The credentials evaluation submitted in support of this criterion, however, is from a credentials evaluation service.

A credentials evaluation service may only evaluate a beneficiary's foreign education for equivalency purposes. An individual's training and past work experience may only be evaluated, for degree equivalency purposes, by 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. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) and (D)(3). The record does not establish that the beneficiary's education and work experience were evaluated by an evaluator with such authority. The petitioner has failed to establish the above cited criterion.

Finally, the record does not establish that the certification received by the beneficiary from the Centre For Computer Information and Training (CCIT) is equivalent to university level education in the field of computer science from an accredited college or university in the United States.¹ The record does not establish that CCIT is an accredited institution of higher education in India, or that it is associated with the university system in India. Counsel notes in his brief on appeal that CCIT is an educational subsidiary of SETWIN/SIMCO, which was established "to provide informal training and assistance in taking up self-employment." Documentation provided by the petitioner notes that SETWIN was established by the Indian government in 1978 "with a view to impart training in skill development short term, need based and job oriented training programmes for the educated and unemployed so that they can live on to make them Self-Reliant." The record does not establish that the training offered by SETWIN through any of its affiliates (CCIT) is equivalent to university level education. It will not, therefore, be considered as such in determining whether the beneficiary is qualified to perform the duties of a specialty occupation. The AAO reiterates that in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) and (D)(3), CIS does not recognize credential evaluation services as competent to determine the educational equivalence of work experience or training – which the CCIT training appears to be. CIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept, or may give less weight, to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Because they are based in part on the beneficiary's work experience and training, the credential evaluation service's opinions about the beneficiary's attainment of the equivalent of a bachelor's degree in computer science or computer information systems are not supported by the evidence of record, and, therefore, will be given no evidentiary weight.

Citizenship and Immigration Services (CIS), may itself determine whether the beneficiary is qualified to perform the duties of the specialty occupation. That determination may be made pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), which provides:

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. . . . 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;

¹ The beneficiary was awarded a certificate from the Centre For Computer Information and Training on March 15, 2005. That certificate was awarded by management of the facility stating that the beneficiary successfully completed a course titled HDCA which was 18 months in duration.

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 occupation;
- (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 documentation recounting the beneficiary's work experience does not establish that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation, or that the beneficiary has recognition of expertise in the specialty. CIS cannot, therefore, determine that the beneficiary is qualified to perform the duties of the 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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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