

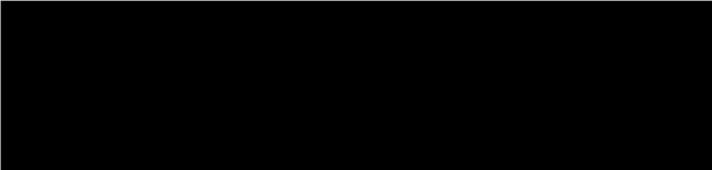
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FILE: EAC 05 224 51832 Office: VERMONT SERVICE CENTER

Date: JAN 16 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:

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, 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 is a software development and computer consulting company. It seeks to employ the beneficiary as a database administrator. 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 May 30, 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 the services of a specialty occupation and submits a second evaluation of the beneficiary's academic and work experience.

The record of proceeding before the AAO contains: (1) the Form I-129 filed August 9, 2005 and supporting documentation; (2) the director's November 8, 2005 request for further evidence (RFE); (3) the petitioner's January 12, 2006 response to the director's request; (4) the director's May 30, 2006 denial letter; and (5) the Form I-290B with the petitioner's June 26, 2006 letter in support of the appeal and supporting documentation. 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 an August 8, 2005 letter submitted in support of the petition, the petitioner listed the specific duties of the position offered to the beneficiary as:

Responsible for database creation, database configuration, space management, user management, backup and recovery, security management and performance tuning, troubleshooting, etc.

Creation of users, allocating tablespaces to users, managing privileges with roles.

SQL tuning and memory tuning.

Monitoring application performance by using Explain plan, analyzing tables and indexes and monitoring statistics by enabling the auto race.

The petitioner noted that the beneficiary had received a Bachelor of Engineering in Engineering from Nagarjuna University in June 1989; had completed a "P.G. Diploma in Computer Applications;" and had been working as a computer professional since December 1999. The petitioner submitted: a copy of the beneficiary's curriculum vitae; a copy of a course completion certificate from ASWA Informatics (ASWA) certifying that the beneficiary had completed a one-year course in "P.G. Diploma in Computer Applications;" a copy of a partially legible transcript of the beneficiary's ASWA coursework listing courses in MS-DOS, MS-Windows, MS-Office, Unix, C, Oracle Developer, and System Analysis and Design; a copy of a diploma issued by Nagarjuna University, Faculty of Engineering, certifying the beneficiary's admission to the Degree of Bachelor of Technology (Mechanical) in June 1989; a partially legible transcript of the beneficiary's coursework at Nagarjuna University; and a February 8, 2005 letter certifying the beneficiary worked from June 6, 2001 to February 8, 2005 as a database administration at Raasi Enterprise Solutions Limited.

In response to the director's RFE, the petitioner listed the beneficiary's coursework at Nagarjuna University and noted that the beneficiary had obtained 56 credits and that 40 of the credits "are directly relevant and related to the work as a programmer analyst." The petitioner did not indicate which credits in particular were relevant to the proffered position. The petitioner indicated further that engineering students use the computer extensively to solve complex engineering problems, involving design, development of systems or application

packages. The petitioner noted again that the beneficiary had also completed one-year of coursework in computer applications at ASWA.

The petitioner also submitted an evaluation of the beneficiary's academic qualifications and professional experience dated January 9, 2006, prepared by Morningside Evaluations and Consulting. The evaluator, Dr. [REDACTED], Assistant Professor of Management Information Systems, Mercy College, Adjunct Assistant Professor, Baruch College of the City University of New York, and Adjunct Assistant Professor, Stern School of Business of the New York University, opined: the beneficiary's degree from Nagarjuna University is equivalent to the completion of a Bachelor of Science degree in Mechanical Engineering from an accredited institution of higher education in the United States. [REDACTED] noted the beneficiary's six years of work experience and concluded that the beneficiary had attained the equivalent of at least a Bachelor of Science degree in Computer Information Systems from an accredited institution of higher education in the United States considering both the beneficiary's academic qualification and the beneficiary's six years of work experience and professional training in Computer Information Systems. [REDACTED] claimed authority to grant college-level credit for training, and/or courses taken at other U.S. or international universities, based on the positions he holds at Mercy College, City University of New York, and New York University.

On May 30, 2006, the director denied the petition, determining that the evidence submitted with the initial filing and in response to his RFE failed to establish that the beneficiary qualified for the position offered. The director observed that the beneficiary had completed courses involving the use of computers but that the courses did not appear to require the beneficiary to program the computers. The director concluded that the petitioner had not established that the beneficiary's education, additional training, and limited practical experience qualified the beneficiary to perform services in a specialty occupation.

On appeal, the petitioner asserts that: (1) a database administrator position is a specialty occupation and that a bachelor's degree in computer science or equivalent is a necessary prerequisite to perform the duties of the position; (2) the beneficiary has earned a bachelor's degree in mechanical engineering, a post graduate diploma in computer applications, and had been employed as a database administrator from June 2001 to February 2005, as a senior systems analyst from February 2005 to May 2006, and as a senior specialist in systems from May 2006 to the present; and (3) the beneficiary's experience letters demonstrate recognition of the beneficiary's expertise in the specialty through progressively responsible positions that are directly related to the specialty.

The petitioner submits a second evaluation of the beneficiary's academic credentials and work experience dated June 19, 2006, prepared by [REDACTED] of IndoUS Technology & Educational Services Inc. on appeal. [REDACTED] notes he has been teaching computer information systems/computer science at Raritan Valley Community College for 23 years and has served as the coordinator of the Cooperative Education (Credit for Work) program of the computer science department since 2002. [REDACTED] states that he has prepared over 4,000 academic/work experience credential evaluations for immigration purposes and that Citizenship and Immigration Services (CIS) has been accepting his evaluations since the year 2000.

Dr. Reddy notes the beneficiary's bachelor's degree in mechanical engineering, the beneficiary's coursework to attain a post graduate diploma in computer applications at Aswa Informatics and opines: "[the beneficiary's] academic credentials are equivalent to a Bachelor's Degree in Mechanical Engineering and 3.5

years of academic studies toward a Bachelor's Degree in Computer Information Systems from an accredited college or university in the United States of America." [REDACTED] continues his evaluation by noting the organizations where the beneficiary worked and concluding that the beneficiary's work experience embodies the theoretical knowledge normally found in college-level coursework and was gained while working with peers, supervisors, and/or subordinates who have a degree or its equivalent in the specialty occupation. In summary, [REDACTED] concludes that the beneficiary's combined academic qualifications and work experience is the equivalent of a bachelor's degree in computer information systems from an accredited college or university in the United States.

The record on appeal also includes a May 16, 2006 offer letter issued to the beneficiary for a position as a senior specialist-systems but does not include a description of the proposed duties of the position; an August 1, 2005 letter certifying the beneficiary had worked for Satyam as a senior system analyst from February 2005 and had expertise in Oracle Database Administration on multiple platforms and had been working extensively on security backup and recovery of Oracle Databases and writing Shell scripts; and a copy of a previously submitted February 8, 2005 letter certifying the beneficiary was employed as a database administrator from June 6, 2001 to February 8, 2005 at Raasi Enterprise Solutions Limited noting that the beneficiary, as an Oracle-database administrator, was involved in database creation, database configuration, space management, user management, backup and recovery and performance tuning.

The record in this matter does not establish that the beneficiary has a bachelor's degree in computer information systems or computer science. The record does not evidence that the beneficiary holds a United States baccalaureate or higher degree required by the occupation. The record does not contain evidence that the beneficiary has a foreign degree determined to be equivalent to a United States baccalaureate or higher degree. The AAO observes that [REDACTED] has evaluated the beneficiary's academic credentials to be equivalent to only 3.5 years of academic study toward a Bachelor's Degree in Computer Information Systems from an accredited college or university in the United States of America. The record does not contain evidence that the beneficiary holds an unrestricted State license that is required by the occupation to practice the occupation; thus the petitioner has not established the beneficiary's qualifications under the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1), (2), or (3).

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 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.

When evaluating a beneficiary's qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. In addition to documenting that the length of the beneficiary's training and/or work experience is the equivalent of four years of college-level training, the petitioner must also 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. The petitioner must also document recognition of the beneficiary's expertise in the specialty, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities¹ in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The petitioner has submitted two evaluations to establish that the beneficiary's combined academic qualifications and work experience is equivalent to the degree required by the occupation. Although both professors claim authority to grant college-level credit for work experience, neither claim is substantiated by independent evidence of the evaluator's authority to grant college-level credit, such as a letter from a dean or provost verifying the evaluator's authority. In addition, the record does not contain substantiating evidence that the universities that employ the evaluators have programs for granting college-level credit based on an individual's training or work experience in the specialty. 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)). The petitioner has not established the beneficiary's qualifications pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

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 opinion, 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)(i)(C)(ii).

Neither does the record contain results of recognized college-level equivalency examinations or special credit programs nor evidence of certification or registration from a nationally-recognized professional association or society for the specialty. 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(2) and (4).

Accordingly, the AAO will consider whether the beneficiary's work experience coupled with his education is sufficient to establish that he is qualified to perform the duties of a specialty occupation involving computers. In this matter it is not. The letters from the beneficiary's former employers do not provide the requisite information regarding the beneficiary's actual duties or describe the beneficiary's peers, supervisors, or subordinates' credentials. In addition, as the record does not contain a detailed description of the duties the beneficiary performed for his previous employers, it is not possible to assess whether the work experience included the theoretical and practical application of specialized knowledge that would be required by a specialty occupation. Further, the record contains no evidence to indicate that the beneficiary's expertise has been recognized in one of the ways discussed above. Although both evaluators offer opinions regarding the beneficiary's work experience, neither evaluator provides an adequate basis for their conclusions. Neither evaluator provides an analysis of the beneficiary's work experience explaining how the duties performed incorporate the specialized knowledge attained through specific courses in a four-year course of study at the university level. Providing conclusions without analysis is insufficient to establish the beneficiary's qualifications to perform the duty of a specialty occupation. When an opinion is in any way questionable, the AAO may discount it or give it less weight. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The record in this matter is insufficient to establish that the beneficiary's training and/or work experience includes the theoretical and practical application of specialized knowledge required by a specialty occupation; that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or degree equivalent in a specialty occupation; and that the beneficiary's "expertise" in a specialty occupation has been recognized. The petitioner has not submitted evidence 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, the petitioner has not established the proffered position of database administrator is a specialty occupation. The petitioner provides a cursory overview of the duties of the position; however, such a description is insufficient to establish that the duties are unique or complex or that the nature of the specific duties of the position are so specialized and complex that the individual performing the duties must have attained knowledge usually associated with the attainment of a baccalaureate or higher degree. The AAO has reviewed the Department of Labor's *Occupational Outlook Handbook (Handbook)* discussion of the occupation of a database administrator and the petitioner's cryptic description corresponds to the *Handbook's* general description of a database administrator. However, when discussing an occupational title such as database administrator, the petitioner cannot repeat portions of the generalized descriptions found in the *Handbook*. 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 providing an overview of an occupation. The petitioner, therefore, has not established 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.

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.