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U.S. Citizenship
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Services

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FILE: EAC 06 148 53294 Office: TEXAS SERVICE CENTER Date:

JAN 31 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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas 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 provides software development and consulting services and was established in 1997. It seeks to hire 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 because the petitioner failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation. On appeal, counsel contends that the director erred in denying the petition, and that the beneficiary is qualified to perform the duties of a software engineer.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) the Form I-290B, counsel's appeal brief and supporting documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the beneficiary is qualified to perform the duties of a specialty occupation. 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.

In making its determination as to whether the beneficiary qualifies to perform the duties of a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C), as described above. The beneficiary did not earn a degree from a United States institution of higher education, so he does not qualify under the first criterion of this subsection.

Nor does the beneficiary qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), which requires a demonstration that the beneficiary's foreign degree has been determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university.

The record does not demonstrate, nor has the petitioner contended that the beneficiary holds an unrestricted state license, registration or certification to practice the specialty occupation; therefore, he does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3).

The fourth criterion, set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), requires a showing that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty.

Thus, it is the fourth criterion under which the petitioner seeks to classify the beneficiary's eligibility to perform the duties of a specialty occupation. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), to succeed in equating the beneficiary's credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the beneficiary would have to present 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.

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), the AAO does not accept the conclusion, reached by Mr. [REDACTED], that the beneficiary has attained the equivalent of a bachelor of science degree with a

dual major in computer information systems and electronic engineering. The evaluator based his evaluation on the beneficiary's diploma in computer technology from Bombay Institute of Technology, his post graduate diploma in software technology from the National Centre for Software Technology and his work experience. [REDACTED] does not claim to have the authority to grant college-level credit for training or experience. Furthermore, the record does not contain evidence, such as a letter from the dean or provost from a university with a program for granting credit based on training and/or experience stating that [REDACTED] has the authority to grant such credit. Thus the petitioner has not established that the beneficiary is qualified to perform the services of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Citizenship and Immigration Services (CIS) uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. However, this evaluation is based upon a combination of the beneficiary's education and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluation carries little weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). The AAO will accept the conclusion of the evaluator that the beneficiary's diploma is equivalent to the attainment of an Associates Degree in the United States.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), which requires that the beneficiary submit 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).

As section 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) recognizes a foreign credentials evaluation service's opinion only to the extent that is an "evaluation of education," not work experience, the AAO does not accept Mr. Silberzweig's conclusion that the beneficiary possesses the equivalent of a U.S. bachelor of science degree with a dual major in computer information systems and electronic engineering.

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), which requires that the beneficiary submit 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.

The AAO next turns to the fifth criterion. 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. The regulation states that it must be clearly demonstrated (1) that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; (2) 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 (3) 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.

For the following reasons, the petitioner has failed to meet the beneficiary qualification requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The former employers' letters describe the beneficiary's experience in terms that are too general to clearly demonstrate that the beneficiary's training and/or work experience included the theoretical and practical application of a body of specialized knowledge. Further, the letters do not clearly demonstrate 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," as the regulation requires.² Finally, the record of proceeding lacks documentation of the type specified at subsections (i) through (v) to establish that the alien has achieved the appropriate level of recognition in a pertinent specialty occupation.

As such, the beneficiary does not qualify under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1)(2)(3)(4), or (5), and therefore by extension does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Thus, the beneficiary does not qualify to perform the duties of a specialty occupation. Therefore, the petition may not be approved.

The petitioner has not established that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition

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).

² The letters provided only account for two years and seven months. 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 that the beneficiary lacks. The beneficiary lacks two years of college-level training; the work letters do not establish a minimum of six years of related work.

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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.