

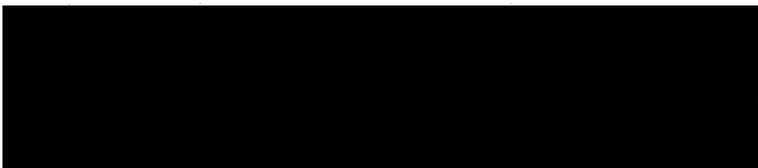
**PUBLIC COPY**

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

DS



FILE: EAC 02 069 52696 Office: VERMONT SERVICE CENTER Date: APR 15 2004

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

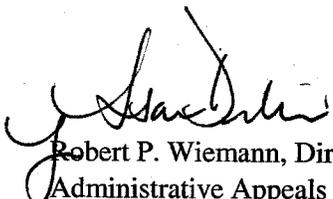
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)

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, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director 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 engaged in the following activities: implementing information technology systems to support the banking and financial operations of companies within the Citigroup organization; marketing Citigroup's proprietary financial systems software products and services; and developing Web-based computer systems for the banking and financial services industries. It seeks to employ the beneficiary as a programmer analyst. 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).

The director denied the petition because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional documentation.

Section 214(i)(2) of the Immigration and Nationality Act (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, in part: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) 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 in its December 5, 2001 letter that the beneficiary is well qualified for the proffered position because he possessed a Bachelor of Science degree in physics, mathematics, and computer science as well as more than five years of progressively responsible work experience in the information technology field. Although not explicitly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in a computer-related field for the proffered position.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education and practical experience in computer programming were not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states, in part, that the record contains an evaluation from the Foundation for International Services, Inc. to demonstrate that the beneficiary possesses the equivalent of a bachelor's degree in computer science from an accredited college or university in the United States. Counsel further states that the record contains employment verification letters to support the evaluator's finding that the beneficiary held progressively responsible positions and has recognized expertise in computer software programming and analysis. Counsel additionally notes that approximately one-third of the beneficiary's university curriculum concentrated on computer science. Counsel submits numerous certificates documenting the beneficiary's computer training.

The record contains the following documentation pertaining to the beneficiary's educational background, computer-related training, and employment experience:

- Evaluation Report, dated November 29, 2001, from the Foundation for International Services, Inc., concluding that, as a result of the beneficiary's educational background and employment experience, the beneficiary holds the equivalent of a bachelor's degree in computer science from an accredited U.S. college or university;
- Copies of the beneficiary's transcripts and Bachelor of Science degree conferred by an Indian institution;
- Letter, dated December 10, 1997, from the human resources manager of the Indian business, Cyblaze, who states, in part, that the beneficiary worked for the said business from June 1996 through December 1997, as a "Programmer Analyst/Executive Training," with duties that entailed executing client orders and software maintenance;
- Letter, dated November 18, 1999, from the human resources manager of the Indian business, Shilsha Tech, who states, in part, that the beneficiary worked for the said business from January 1988 through November 1999, as a "Programmer Analyst," with duties that entailed managing a team of software professionals, executing client orders, implementing projects, and providing training, support, and maintenance to clients;
- Undated certificate from the managing director of the Indian business, Halloindia Consultancy Pvt. Ltd., who states, in part, that the beneficiary worked for the said business from November 22, 1999 through October 2000, as a "Programmer Analyst" in the Software Export Division, with duties that entailed handling development projects for the business's overseas clients;

- Letter, dated October 12, 2001, from the human resources manager of the Indian business, Command International Software, who states, in part, that the beneficiary has been working for the said business as an "Analyst" since November 2000 and "is leaving us on his own accord for better prospects";
- "Higher Diploma in Software Engineering" awarded to the beneficiary by Aptech Computer Education on December 2, 1998, for completion of a computer course, with "Main Programming Language: FOXPRO, C, C++ & UNIX" and "DBMS/RDBMS: ORACLE WITH OPO";
- "Performance Statement (Semester I)," issued on October 5, 1995 (Examination Date: July 2, 1995), by Aptech Computer Education, reflecting that the beneficiary passed the following subjects: "Concepts of Information Processing, MS-DOS, Word Star, Windows, Lotus 1-2-3, Using Foxpro, Communication and Personality Development";
- "Performance Statement (Semester II)," issued on March 6, 1996 (Examination Date: December 3, 1995), by Aptech Computer Education, reflecting that the beneficiary passed the following subjects: (1) Programming Practices & Techniques, Programming in FoxPro, (2) Computer Networks, Concepts of Advanced Information Processing, Communication & Personality Development, and (3) Programming Project;
- "Performance Statement (Semester III)," issued on April 4, 1997 (Examination Date: March 16, 1997), by Aptech Computer Education, reflecting that the beneficiary passed the following subjects: (1) OOA/D; OOP with C++ and (2) UNIX; Networking Technologies;
- "Performance Statement Semester IV," issued on November 30, 1998 (Examination Date: October 18, 1998), by Aptech Computer Education, reflecting that the beneficiary passed the following subjects: (1) Client/Server Applications; Advanced Object Oriented Analysis and Design, (2) Relational Database System Concepts, and (3) Project (RDBMS Project using Object Oriented Analysis and Design); and
- Various Microsoft and Brainbench certificates and certifications.

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 credentials evaluator from the Foundation for International Services, Inc. found that the beneficiary's diploma from the University of Mysore in Mysore, India is equivalent to three years of university-level credit from an accredited college or university in the United States. As such, the beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in any 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).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree 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 record contains an evaluation from the Foundation for International Services, Inc., a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary possesses the equivalent of a bachelor's degree in computer science from an accredited U.S. college or university. However, the evaluation is based upon the beneficiary's education, training 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 no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 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 occupation<sup>1</sup>;

---

<sup>1</sup> *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).

- (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 various employment letters and computer-training certificates. The documentation does not establish equivalence to a baccalaureate degree in computer science or any other computer-related field. None of the computer training certificates indicates the length of training. In addition, the petitioner did not submit any independent evidence to illustrate how these training certificates relate to the completion of a baccalaureate degree in a computer-related field. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. The record contains four letters of employment. As described by each employer, the beneficiary's duties did not appear to involve the theoretical and practical application of systems analysis. One employer assigns duties to the beneficiary such as "executing client orders and software maintenance." Another employer provides no description of the beneficiary's duties at all. All the employers describe the beneficiary's duties generically; little specificity to the beneficiary's daily activities or his level of responsibility is provided. Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge. Furthermore, none of the employers indicates 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.

Finally, there is insufficient evidence that the beneficiary has recognition of expertise as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

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.

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.