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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 01 031 52000 Office: CALIFORNIA SERVICE CENTER Date: APR 20 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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:

[redacted]

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

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 an apparel manufacturer that seeks to employ the beneficiary as a software engineer. 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 information.

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;
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> *(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
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> *(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 software engineer. 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 credential evaluator did not conclude that the beneficiary holds the equivalent of a computer-related baccalaureate degree from an accredited U.S. institution.

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 record contains an evaluation from Education International, Inc. concluding that the beneficiary holds a foreign degree determined to be equivalent to a baccalaureate degree from a "non-accredited" U.S. institution. The evaluator also concludes that the beneficiary completed approximately 60 percent of the equivalent of a master's degree, specializing in computer studies, from an accredited U.S. institution. As such, the evaluator does not find that the beneficiary holds the equivalent of a computer-related degree from an accredited U.S. institution. 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 the following documentation relating to the beneficiary's qualifications:

- Memorandum to counsel, dated October 23, 2001, from Joel B. Slocum from Education International, Inc., requesting additional information and indicating that the beneficiary "may" hold the equivalent of at least a bachelor's degree or higher in computer studies;

- Memorandum to counsel, dated October 30, 2001, from Joel B. Slocum from Education International, Inc., requesting additional information and indicating that it was still not clear where the beneficiary stood with respect to a attaining a master's degree;

- Statement of Evaluation, dated December 5, 2001, from [redacted] from Education International, Inc., concluding that the beneficiary holds a foreign degree determined to be equivalent to a baccalaureate degree from a "non-accredited" U.S. institution, and the beneficiary completed approximately 60 percent of the equivalent of a master's degree, specializing in computer studies, from an accredited U.S. institution;

- Various documents demonstrating that the beneficiary completed master's level computer-related courses at Aalborg University;

- Copies of a bachelor's degree in computer science, his transcript, and related documents issued to the beneficiary by the Americanos College;

- Microsoft Examinations Score Report, dated March 28, 1999, reflecting that the beneficiary passed the examination on Networking Essentials;

- Letter, dated August 28, 1998, from [redacted] f Bosch Telecom Danmark A/S, who states, in part, that the beneficiary was employed from July 1 through August 31, 1998, "in a student job . . . as supervisor . . .with analysis of software modules written in ansi C. . . ."; and

- Letter, dated December 4, 1998, from an associate professor of Aalborg University, who states, in part, that the beneficiary was employed as a student assistant from September 1998 until June 1999, "working in a team with another student and successfully completing the development of a web-application prototype."

On appeal, counsel states, in part, that the record contains a letter from the International Student Coordinator of Aalborg University maintaining that, in order to enroll in the master's program at Aalborg University, the beneficiary had to submit evidence of a "B.Sc in electronic engineering or computer science from a recognized university. . . ." Counsel concludes that, as the evaluator from Education International, Inc. recognized Aalborg University as an accredited institution, then the Americanos College must also be accredited, because Aalborg University accepted the beneficiary's credits from that institution. Counsel's assertion is noted. The record, however, does not include any corroborating evidence, such as a statement from the evaluator of Education International, Inc. explaining why he concluded that Americanos College was a non-accredited institution and conceding that such assessment was made in error, as asserted by counsel. In view of the foregoing, the petitioner has not overcome the objection of the director.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 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[1];

(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 the above-listed evidence pertaining to the beneficiary's academic background and computer-related training. As previously discussed, however, the issue of the beneficiary's baccalaureate-level computer training having been acquired at the equivalent of a U.S. "non-accredited" institution has not been adequately resolved. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In view of the foregoing, the record does not demonstrate that the beneficiary's academic background and training are the equivalent of a computer-related baccalaureate or higher degree. *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. As described by each employer, the beneficiary's duties did not appear to involve the theoretical and practical application of software engineering. Both employers describe the beneficiary's employment as student-related. 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, which in this case is software engineering. Furthermore, neither employer 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.

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[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).

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.