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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

[redacted]

FILE: EAC-01-259-55617 OFFICE: VERMONT SERVICE CENTER DATE: FEB 06 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the 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 real estate company that employs an undisclosed number of persons and has a gross annual income of $275,000. It seeks to employ the beneficiary as an administrative technical manager. The director denied the petition because the petitioner did not establish that the beneficiary is qualified to perform services in a specialty occupation.

On appeal, counsel states that the beneficiary is more than qualified to perform the duties of a specialty occupation. Counsel submitted a timely Form I-290B on May 10, 2002, indicating that a brief and/or additional evidence would be submitted to the AAO within 30 days. As of this date, however, the AAO has not received any additional evidence. Therefore, the AAO considers the record complete.

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), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Furthermore, 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 addition, 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 petitioner's letter, accompanying the I-129 petition, described the beneficiary's duties as follows:

> [The beneficiary] is being hired to facilitate Bansal Realty's goal of launching the [w]eb [s]ite. He will be in charge of [a] wide range of projects, from the initial conceptualization and prototyping through development and implementation. He will specifically identify applications of computer technology and [i]ndustry specific software crucial for achieving business goals. In summary, [the beneficiary] will be responsible for analyzing requirements, developing detailed technical design specifications[,] and coding web pages for [the] company's [w]eb [s]ite, and will plan, organize, schedule, direct and control the project team.

The letter stated that the administrative technical manager position is part-time. The petitioning entity submitted a credential evaluation report, dated January 9, 1996, from WES, stating that the beneficiary's bachelor's degree in science (with a specialization in mathematics, physics, and chemistry), and his master of science degree (with a specialization in chemistry), are equivalent to a bachelor's degree and one year of graduate study. The petitioner also submitted two Novell Education Certificates, one in NetWare 3.1x Administration, and the other in NetWare 3.1x Advanced Administration; an academic transcript record, dated July 7, 1999, from Middlesex County College, stating that the beneficiary's major is computer science; and an invoice from

Middlesex County College.

On November 15, 2001, the director requested additional information: (1) names of all the beneficiary's employers, and places and dates of employment for the past six years; (2) the beneficiary's immigration status, if employed in the United States; (3) evidence that the proffered position qualifies as a specialty occupation; (4) evidence of how many employees hold similar positions as the proffered position, and whether the persons hold a bachelor's degree, and if so, the field of study; (5) evidence describing the duties the beneficiary has performed while employed with the petitioner, and the duties he will perform if the petition is extended; (6) a detailed statement delineating the beneficiary's proposed duties and responsibilities, and a statement indicating the educational requirements of the position and how the beneficiary's education relates to the position; and (7) evidence that would show that the beneficiary is qualified to perform the duties of a specialty occupation, and how the beneficiary's degree(s) in chemistry qualify him for the offered position, and if the degree(s) are not directly related to the field, submit a statement detailing how the degree relates to the proffered position.

In response, the petitioner's attorney submitted a letter, stating that the proffered position qualifies as a specialty occupation and that the beneficiary qualifies to perform the duties. Counsel stated that the beneficiary has not only the equivalent of a bachelor's degree in science, but also an associate's degree from Middlesex County College in applied science, with a specialization in computer and information systems. Counsel claimed that the associate's degree equips the beneficiary with the necessary skills and knowledge about information systems and computer technology to perform his job duties. Counsel stated that the petitioner's letters detail the complexity of the beneficiary's duties, and the petitioner's letters and supporting documentation establish the beneficiary's qualifications to perform the duties of a specialty occupation.

The petitioner's letter of February 7, 2002 stated that the company, established in 1984, owns and manages properties such as industrial plots, condominiums, apartment complexes, stand-alone ranch houses, and office spaces in prime business locations in New York, New Jersey, and Pennsylvania. The letter further explained that the petitioner is reorganizing its operations towards integrated computerization and automation to reduce costs and effectively manage daily operations. The letter claimed that its data processing, and information and management functions are not computerized; thus, the petitioner seeks to computerize its business by having the beneficiary update and automate operations by computerizing bookkeeping, and entry of property details and legal documentation, and coordinating sales and advertising. The beneficiary would build, the letter averred, an Intranet to

synchronize all the branches, connecting them to the Internet, and would build a company website.

The petitioner's job posting stated that candidates for the proffered position should possess a bachelor's degree in science, have at least two years training in computers, and possess knowledge of the Internet and web related technology programming languages such as C++ and VB, and web design, among other areas.

The beneficiary's responsibilities were expounded as follows:

> Phase 1:
> Evaluating the project for feasibility. Estimating personnel requirements, budgets and schedules for systems development and maintenance projects. Performing interviews and other fact gathering. Documenting and analyzing current systems operations. Defining user requirements for improving or replacing systems. In identifying potential applications for computer technologies that may fulfill requirements. Evaluating application of [c]omputer [t]echnology for feasibility. Recommending new systems and [t]echnical [s]olutions to end users and management. Identifying potential hardware and software purchases. Designing [s]ystem inputs, outputs, online dialogue, flow and procedures. Designing files and databases. Writing, testing[,] and supervising application development. Training staff members for new systems. Converting previous operations to new systems. Supporting operational applications.
>
> Phase 2:
> 1. Involves the [s]ystem study of the existing application and interacting with the advisors.
> 2. [D]esigning [WebPages] using Adobe photo shop and Dream Weaver.
> 2. Writing [c]lient-side coding using Java-[S]cript and HT[ML] and [s]erver-side [s]cripting using ASP, VB-[S]cript.
> 3. Creating COM [c]omponents on [s]erver-[s]ide using Visual Basic to access the SQL-Server and Oracle Databases.
> 4. Maintaining the Real Time Replicating Server (RTR) for replicating the problems on all the IIS servers.
> 5. Creating MTS [c]omponents to fetch data from [the] [e]xchange server and updating the database.
> 6. Using XML stream to read data from [the] [s]ecurity database and post it to the application database[.]
> 7. Designing and developing web traffic reports with graphs using Perl and Chart FX.
> 8. Creating [s]tored [p]rocedures and [t]riggers in SQL-Server database.
> 9. Designing and implementing [d]atabases.

On April 9, 2002, the director denied the petition, finding that the beneficiary was not qualified to perform the duties of a specialty occupation. The director determined that the petitioner failed to establish that the beneficiary possesses the equivalent of a bachelor's degree in computers and information systems.

On appeal, counsel asserts that the beneficiary is qualified to perform the duties of a specialty occupation based on his education and experience. For instance, counsel declares that the beneficiary holds, in addition to a bachelor's degree in science, an associate's degree in applied science, with a specialization in computer and information systems, from Middlesex County College; therefore, equipping the beneficiary with the necessary knowledge about information systems and computer technology to perform the duties of the position. Furthermore, counsel states that the beneficiary has already demonstrated he can perform the duties of the position given his prior employment with the petitioner.

The issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of the proffered position; specifically, whether the beneficiary possesses the equivalent of a bachelor's degree in computers and information systems, or a closely related discipline, from an accredited university or college in the United States.

The evidence contained in the record fails to demonstrate that the beneficiary is qualified to perform the duties of the proffered position. The petitioner has not established that the beneficiary has the 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 has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. For example, the petitioner has not provided 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 that has a program for granting such credit based on an individual's training and/or work experience.

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.