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DQ

FEB 1 2 2004

FILE: EAC 02 070 53233 Office: VERMONT SERVICE CENTER Date:

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 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 a general practice law firm that seeks to employ the beneficiary as a business programmer. 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 beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits two certified statements from the beneficiary.

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 business programmer. The petitioner indicated in a letter, dated April 22, 2002, that it wanted to employ the beneficiary because she possessed a bachelor of science degree in business administration and had studied computer programming and hardware training. In its response to the director's request for further evidence, the petitioner stated that the beneficiary's education in business administration with a major in banking and finance was closely related to the proffered position.

According to the petitioner, the beneficiary would: maintain and develop a database for the law firm's network system, design and enhance all business forms for the information retrieval system of the office; monitor the daily activities of the law office; prepare reports and updates on the progress of cases; provide an electronic data alarm for lawyers and staff on court hearings and other matters that need immediate attention; upgrade the office computer hardware and other peripherals; interpret the Tagalog language for the petitioner's activities in the Philippines; provide recommendations on global multi-level marking strategies in the Philippines and the Far East; assist in promotion and adversity strategies for client's projects; and perform other related services.

The director determined that the beneficiary's foreign degree was the equivalent of a U.S. degree in business administration. However the director noted that, based on her university transcripts, the beneficiary had never taken any computer programming courses in her undergraduate work. The director further noted that three computer course completion certificates submitted to the record gave no details of the length of time for the courses, and beneficiary's certification of employment from her employer in the Philippines did not indicate any programming duties. Due to the lack of education or training credentials in any computer-related work, the director found that the beneficiary was not qualified to perform the duties of the proffered position.

On appeal, counsel submits two notarized statements by the beneficiary. The first statement detailed the length of time for three computer courses, and for the beneficiary's attendance at an international exhibit on computer software, hardware, and other peripherals. The second statement outlined the beneficiary's job duties while working for the Supreme Court of the Philippines from February 1988 to June 2001.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. The documentation submitted by counsel on appeal is found insufficient to meet the deficiencies outlined by the director in his decision. While the statements by the beneficiary are detailed, they do not provide sufficient probative weight in the instant petition. Of more probative weight would be documentation from the business that provided the computer training courses and correspondence from the personnel office of the Supreme Court of the Philippines to further explain the beneficiary's work experience, along with a breakdown of time spent in the computer field. If the intent of the petitioner is to establish that the beneficiary possesses the equivalent of a baccalaureate degree in a computer related field, in addition to her baccalaureate degree in business administration, the record contains insufficient evidence to establish this assertion.

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; or

(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 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 petitioner has submitted no documentation that CIS could use to determine the beneficiary's qualifications in any computer-related field. Without more persuasive evidence, the petitioner has not established that the beneficiary is qualified to perform the computer-related duties of the proffered position.

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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.

Beyond the decision of the director, the AAO does not find that the proffered position is a specialty occupation. As described by the petitioner, the proffered position has numerous duties that encompass distinct areas of expertise and experience. There is no information in the record as to how much time the beneficiary would spend in such disparate duties as improving business forms, monitoring the office activities, developing a database system for the office's network, or interpreting Tagalog for the petitioner's clients. The duties of the position that would involve the beneficiary's actual academic credentials, namely business administration, are only described in generic terms. When viewed separately or in the aggregate, these duties do not necessarily appear to require the theoretical and practical application of a body of highly specialized knowledge, as required by Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(l). However, as the AAO is dismissing the appeal on another ground, it will not examine this issue further.

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.