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U.S. Department of Homeland Security

Citizenship and Immigration Services

*ADMINISTRATIVE APPEALS OFFICE*
*CIS, AAO, 20 MASS. 3/F*
*425 Eye Street N.W*
*Washington, D.C. 20536*

[redacted]

File: EAC 02 081 54624 Office: VERMONT SERVICE CENTER Date: JAN 05 2004

IN RE: Petitioner:
Beneficiary: [redacted]

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 which 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 nonimmigrant visa petition was denied by the Director, Vermont Service Center on February 27, 2002. A motion to reopen was thereafter filed by counsel. The director affirmed his prior decision on October 15, 2002, holding that the petitioner had failed to overcome the grounds of the original denial. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner offers computer and consulting services. It has two employees and a gross annual income of $57,000. It seeks to employ the beneficiary as a systems administrator. The director denied the petition because the beneficiary did not qualify to perform the duties of a specialty occupation.

On appeal, counsel submits a brief stating that the proffered position is a specialty occupation, and that the beneficiary is qualified to perform the duties of a specialty occupation.

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

The director acknowledged that the proffered position is a specialty occupation in his decision of February 27, 2002. The director's decision of October 15, 2002, affirming his prior denial of the I-129 petition, was based solely on the beneficiary's qualifications to perform the duties associated with that occupation. The only issue to be discussed in this proceeding is whether the beneficiary is qualified to perform the duties of a specialty occupation.

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) completion of such experience in the specialty equivalent to the 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 beneficiary 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.

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 or 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 denying the petition, the director held that the beneficiary was not qualified to perform the duties of the specialty occupation. On appeal, counsel disputes that finding and references a credentials evaluation report supplied by IndoUS Technology & Educational Services, Inc.

The offered position is that of a systems administrator and requires a baccalaureate or higher degree, or its equivalent, in the field of computer science or management information systems for entry into the position. The petitioner seeks to qualify the beneficiary by establishing that the beneficiary meets the requirements of 8 C.F.R. § 214.2 (h)(4)(iii)(C)(4). In support of this assertion, the petitioner submitted an evaluation from Dr. Pratap P. Reddy, an evaluator with IndoUS Technology & Educational Services, Inc. The beneficiary holds a Bachelor of Science degree in math/physics from the University of Punjab, located in Lahore, Pakistan. The beneficiary then obtained a Master's Degree in Business Administration from the United States International University (Nairobi campus). United States International University is now known as Alliant University with its main campus being located in California. It is the opinion of Dr. Reddy that the combination of the beneficiary's two foreign degrees is equivalent to Bachelor of Science Degree in Management Information Systems from an accredited college or university in the United States. The petitioner has, therefore, satisfied the requirements of 8 C.F.R. § 214.2 (h)(4)(iii)(C)(4), and 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). The beneficiary is qualified to perform the duties of offered position.

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 sustained that burden. The appeal shall accordingly be sustained, and the petition will be approved.

**ORDER:** The appeal is sustained. The petition is approved.