Citizenship and Immigration Services

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

Identifying data deleted to
prevent [illegible]
invasion of personal privacy

[redacted]

JAN 13 2004

FILE: EAC 01 224 54335 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]

PUBLIC COPY

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 nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a computer software development and consultancy firm that currently employs 9000 persons worldwide and 1300 persons in the United States. It had a gross annual income of $156,000,000. It seeks to employ the beneficiary as a programmer analyst for a period of three years. The director denied the petition because he found that the beneficiary was not qualified to serve in a specialty occupation.

On appeal, counsel presents a brief and additional evidence.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), an alien must meet one of the following criteria to qualify to perform services in a specialty occupation:

> (*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 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.

An "Academic Evaluation Report" of the beneficiary's educational credentials by Educational Assessment, Inc. opined that the beneficiary "has earned the equivalent of a Bachelor of Engineering degree in Mechanical Engineering from an accredited university in the United States." The record also contained letters from former employers indicating the beneficiary's computer-related work experience.

On the Form I-129, the petitioner listed the proffered position as "Programmer Analyst." Among other documents accompanying the Form I-129 was a letter from the petitioner's director and senior vice president which stated that the beneficiary would be employed "in the specialty occupation position of Programmer Analyst to serve as a Team Member for a project that we have undertaken on behalf of our client General Electric Power Systems in Schenectady, New York [hereinafter referred to as the client]." The client is described as widely involved in energy production and delivery: "From assisting with the mining of natural resources to the distribution of energy to the customer, [the client] provides a portfolio of innovative product and service solutions across the power generation, oil and gas, transmission and distribution, distributed power, and energy rental industries."

The letter further described the client's project and the beneficiary's proposed role:

> [The client] has contracted [the petitioner] to transition the development and maintenance of its engineering business systems from its current suppliers to create a resource pool for its company. [The petitioner] will apply its proprietary onsite-offshore development processes[.] [The petitioner] will be involved in the assessment of [the client's] current business process to identify the areas of problems in Critical to Quality parameters such as cycle time, cost levels of consumer satisfaction, availability and response time. [The petitioner] will use its methodology for business re-engineering, process mapping, diagnosis redesign, prototyping and full scale implementation to arrive at solutions for current problems as well as develop cutting edge processes to make [the client] a dominant focus in the global sector.
>
> [The beneficiary] will remain on [the petitioner's] payroll and will be under the direct supervision of a [petitioner] onsite manager. As a Programmer Analyst, [the beneficiary] will be responsible for the following:
>
> - Capturing user requirements and analysis of the same through the study of user requirements;

- Studying and documenting the existing [client] systems to frame Global Connector Development;

- Mapping software processes;

- Designing and developing prototype software for work flow-based group ware solutions using Lotus Domino; and

- Administration of groupware solutions in Lotus Domino.

The director and senior vice president's letter identified the position as "an entry-level position in the computer software field" that "requires the application of technologies and principles that can only be gained through attainment of at least a Bachelor's degree in Computer Science, Engineering, Mathematics, or Technology, as well as experience in designing and developing computer software applications."

The director issued a request for additional evidence, which, in part, solicited "evidence that the job requires [the] services of the holder of at least a baccalaureate degree in the field of mechanical engineering." Part of the petitioner's response was a second letter from the director and vice president. This letter restated information presented in the previous letter and introduced additional information, some of which shall be noted here.

The letter newly conveyed that the proffered position would require conferences with the client's "technical personnel and end users, as well as detailed technical analysis of [the client's] requirements to identify problems," and that the beneficiary's study and documentation would extend to the client's "business, engineering, and production systems." The letter also noted that teamwork would be involved in analyzing the client's existing systems and load requirements.

The letter also conveyed that the proffered position requires "a customized analysis of clients' [sic] computer systems and problem resolution through software design and programming," and "application of several types of programming and scripting languages as well as experience with computer systems and processes."

The letter's explanation about the relevance of a mechanical engineering degree included these statements:

> In our hiring experience, we have found individuals with Mechanical Engineering degrees particularly well suited for the Programmer Analyst function. The Mechanical Engineering program of study emphasizes engineering mathematics, including logic, algebra, calculus and algorithms; electrical technology; numerical analysis; and the analysis and design of systems such as control systems involved in the sophisticated computer systems. Laboratory work, as well as coursework, in the Mechanical Engineering discipline entails work with dynamic systems, computerized engineering design, and engineering analysis and software and applications. Moreover, the Mechanical Engineering program of study emphasizes techniques for defining and solving open[-]ended problems including problem definition, ideation, optimization, decision making, and oral and written communication of solutions.
>
> Expertise in this area is extremely valuable for identifying programming errors and systems weaknesses, as well as communicating solutions to clients. Expertise in Mechanical Engineering is also very helpful for recognizing optimization opportunities in our clients' systems. Moreover, individuals with a Mechanical Engineering background have knowledge of linear and nonlinear systems and control strategies and techniques, which are highly relevant to the enterprise-wide and production systems utilized by our clients.
>
> Over the years we have hired numerous individuals with university degrees in Mechanical Engineering. We have made such hiring decisions based on the fact that the Mechanical Engineering curriculum has a direct correlation to the duties of the Programmer Analyst position. As explained above, many of the courses completed in a mechanical engineering course of study involve sophisticated computer applications, advanced analytical tools, technical problem-solving skills, engineering judgement and computer systems. Thus, a large number of individuals working within the field

> of Information Technology have a Mechanical Engineering degree as their academic foundation.

The director and vice president's second letter enclosed an "Expert Opinion" letter from [redacted] Ph.D., an associate professor at the School of Management at George Mason University. The letter, in part, opined that a bachelor's degree in mechanical engineering and the beneficiary's mechanical engineering coursework, in particular, well equip a person to perform as a programmer analyst. The professor noted, in part, the strong analytical abilities developed by a mechanical engineering background and stated that proficiency in computer programming is "an integral part" of the coursework towards a bachelor's degree in mechanical engineering. Also, from the beneficiary's undergraduate courses, the professor cited four as "clearly related to the duties of a programmer/analyst," and another seven as "Mechanical Engineering design and drawing related courses that have programming applications."

Implicit in the director's denial letter is his conclusion that the proffered position is a specialty occupation. There is no reason for the AAO to disagree with that conclusion, as it is supported by substantial evidence in the record.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), an alien qualifies to perform services in a specialty occupation if he or she holds 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. Upon review of the entire record, the AAO has determined that the beneficiary has met this qualifying criterion.

The director's denial of the petition summarized the adverse finding as follows:

> The independent evaluator has stated that the beneficiary's foreign degree is the equivalent to a U.S. degree in mechanical engineering. A review of the beneficiary's transcript indicates that the beneficiary had taken 3 computer-related courses, and two CAD/DAM courses. In addition, the three computer course completion certificates give no details of the subjects studied or the length of time the courses took to complete. Further[,] your letter states that the beneficiary has twenty-six months of practical

> experience. The claim was not supported by any documentary evidence. Finally, the letter from Professor [redacted] has attempted to equate the beneficiary's degree with a U.S. degree in computer science. The professor has attempted to equate a number of mechanical design and drawing courses as well as CAD/CAM as computer related. However, the record contains no evidence that the beneficiary did any programming during these courses. In conclusion, the Service is not convinced that the beneficiary's education, additional training, and, [sic] claimed experience qualified [him] to perform services in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Act.

The foreign-degree evaluation firm's assessment of the beneficiary's academic credentials is acceptable and unchallenged by the director. The evaluation firm notes that its determination was based on formal education only, namely, the beneficiary's award of a bachelor's degree in mechanical engineering by the University of Madras, India.

The question that remains is whether the beneficiary's U.S.-equivalent bachelor's degree in mechanical engineering is one that is required by the proffered position's specialty occupation. The AAO answers this question in the affirmative.

On appeal, counsel presented a 12-page brief, signed by the petitioner's director and senior vice president, which persuasively delineated the evidence submitted by the petitioner. Counsel, in part, asserts that the director misinterpreted the prospective duties as primarily computer programming, when, in fact, the critical job element is the analytical skill derived from the coursework leading to the beneficiary's mechanical engineering degree. Counsel also asserts that the beneficiary's mechanical engineering degree alone qualifies him for the proffered position.

Counsel states, in part, "[a]s stated in previous submissions, many of the courses completed in a Mechanical Engineering course of study involve computer applications, advanced analytical tools, technical problem-solving skills, and computer systems that prevail in the manufacturing and engineering industry," and that this provides an "expertise" enabling programmer analysts to "understand and correctly analyze customer's manufacturing and engineering processes and apply the systems that can most

effectively help companies develop, implement, and analyze organizational activity."

The most persuasive and decisive evidence presented are the letters from Professor [redacted] and [redacted] Ph.D., Associate Professor of Computer Science, Zicklin School of Business, at Baruch College, School of Business, City University of New York.

Counsel presents Professor [redacted] "Professional Position Evaluation" letter with the brief on appeal. Professor [redacted] letter presented and focused upon a description of the proposed position that substantially comports with the information previously presented by the petitioner. As the following excerpts indicate, Professor [redacted] opined that the proffered position requires a bachelor's degree in a highly technical field such as mechanical engineering. These excerpted paragraphs immediately follow the professor's stating that many mechanical engineering courses "include the design and analysis of computer systems that aid in engineering processes," and that "the study of engineering involves concepts and practical techniques of computer science, computer programming, electronics, engineering, and mathematics."

> This latter point bears particular note, as it is my opinion that generalized knowledge of the technical sciences alone is not sufficient for a programmer analyst to handle the functional requirements for the instant position. Bachelor's-level training in computer science or a related field, such as one of the relevant engineering disciplines, enables a programmer analyst to analyze complex workflows and to formulate accordant, automated solutions and/or processing improvements to meet workflow needs. Furthermore, a programmer analyst with the appropriate bachelor's level background possesses the training and skills necessary to design advanced programs and prototypes in accordance with the parameters of multi-varied automated formats (such as those encountered within bachelor's-level curricula in such subjects as computer science and/or mechanical engineering). Indeed, it would be impractical to employ a programmer analyst who lacks a bachelor's level educational background in computer science, or one of the related engineering disciples.
>
> As a further matter, it is my opinion that programmer analysts who will be working with advanced mathematical models and algorithmic processes, for example in the

> execution of the duties outlined above, would benefit specifically from the demonstration of academic training and/or professional experience in engineering, in addition to applying computer programming concepts for optimal execution of the required job duties. An educational and/or professional background in engineering provides a programmer analyst with specialization in the functional aspects of the instant position, such as the installation of complex system infrastructures and the application of mathematical principles towards the resolution of operational problems.

Professor [redacted] letter also reviewed the beneficiary's academic background and work experience, and concluded that the beneficiary was qualified to hold the proffered position.

It should also be noted that Professor [redacted] stated that he has "the authority to grant college-level credit for Baruch College-CUNY based on a candidate's foreign credentials, training, and or employment experience in computer science, engineering an related areas." On the basis of the beneficiary's work experience, as indicated by the letters of employment, Professor [redacted] stated, "I find that [the beneficiary's] yields the equivalent of one additional year of bachelor's-level study toward a Bachelor of Science Degree, with a major in Computer Science; and that this employment provides further evidence as his qualifications for the prospective position." However, the AAO accords no weight to this aspect of the professor's letter, because there is no independent evidence from an appropriate official at the professor's college, such as the provost or an appropriate dean, to confirm the professor's authority to assess and grant college-level credit on the basis of work experience.

The burden of proof in these proceeding rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director will be withdrawn and the appeal will be sustained.

ORDER: The decision of the director is withdrawn and the appeal is sustained. The petition is approved.