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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: EAC 02 003 52044 Office: VERMONT SERVICE CENTER Date: JUN 7 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 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.

for Mari Johnson

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 computer consulting business that seeks to employ the beneficiary as a programmer analyst. 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 a new credentials evaluation for 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;
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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
>
> (*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 programmer analyst. Although not explicitly stated in its September 7, 2001 letter, 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 beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states, in part, that the beneficiary is qualified for the position because he holds a bachelor's degree in commerce and a diploma in business management from Indian institutions, a diploma in computer programming from an Indian computer-training institute, and more than 13 years of work experience in computer programming. Counsel also submits a copy of an evaluation from Morningside Evaluations and Consulting.

The record contains the following documentation related to the beneficiary's qualifications:

- Evaluation, dated March 2002, from William Edelson, Ph.D, consultant for International Credentials Evaluation and Translation Services (ICETS), and professor in the Computer Science Department at Long Island University, Brooklyn, New York, who states, in part: "The demonstration of Five Years, Eight Months of specialized work experience in Computer Science, considered together with his prior studies at The University of Bombay, indicate that [the beneficiary] satisfied similar requirements to the completion of a Bachelor of Science Degree in Management Information Systems from an accredited institution of tertiary education in the United States.";

- Evaluation, dated January 14, 2003, from Morningside Evaluations and Consulting stating, in part, as follows: "On the basis of the credibility of the University of Bombay, the Institute of Advanced Technology, NIIT, the number of years of coursework, the nature of the coursework, the grades earned in the coursework, and the hours of academic coursework, it is the judgment of Morningside Evaluations and Consulting that [the beneficiary] has attained the equivalent of a Bachelor of Science in Computer Information Systems degree from an accredited institution of higher education in the United States;

- Microsoft Examination Score Report, dated February 26, 2001, indicating that the beneficiary passed the exam entitled "Implementing and Supporting [Microsoft Windows NT] Workstation 4.0";

- Microsoft Examination Score Report, dated April 9, 2001, indicating that the beneficiary passed the exam "Administering [Microsoft SQL Server] 7.0";

- Transcript from NIIT, indicating that the beneficiary had 26 weeks of training in "Network – Centered Computing Curriculum";

- Certificates from the Institute of Advanced Technology (IAT), Nairobi, Africa, indicating that the beneficiary attended the Introduction to Windows 95 course held on June 21 – 25, 1999, and successfully completed the COBOL 85 course held on June 28 – August 6, 1999;

- Undated certificate indicating that the beneficiary successfully completed the requirements to be recognized as a Microsoft Certified Professional;

- Certificates from South Gujarat University showing that the beneficiary passed Parts I, II, and III of the "Diploma of Business & Industrial Management" examinations in April 1976, April 1977, and April 1978, respectively;

- Transcripts and degree issued to the beneficiary from the University of Bombay reflecting that on February 23, 1963, the beneficiary received a bachelor's degree in commerce with statistics as his "selected subject";

- Letter, dated March 14, 2001, from the "Front Office Counsellor" of NIIT, who states, in part: "We confirm [the beneficiary] is registered for the **DNIIT Programme – Software Engineering Course in e-technology** course and has completed the first semester of the programme[,] the **Advanced Certificate in PC Applications (APA)** and the following modules of the second semester: **Programming Logics and Techniques, Unix Administration and Programming with C++**.;

- Letter, dated August 2, 2001, from a representative of Fidelity Commercial Bank LTD., Nairobi, Kenya, who states, in part that the beneficiary was hired on July 19th, 1999 as a "Senior Officer" and rose to a "General Manager" position by the time he left the bank on May 15, 2001. The writer further states: "By profession [the beneficiary] is a Programmer/Analyst."; and

- Beneficiary's resume.

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 beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in a computer-related field. 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.

On appeal, counsel submits an evaluation from Dr. Gerald L. Itzkowitz of Morningside Evaluations and Consulting, a company that specializes in evaluating academic credentials. Dr. Itzkowitz concluded that the beneficiary possesses the equivalent of a Bachelor of Science degree in Computer Information Systems from an accredited institution of higher education in the United States. Dr. Itzkowitz asserts that, because of the positions he holds at Queens College of the City University of New York, he has "the authority to evaluate whether the school is to grant college level credit for experience, training, and/or courses taken at other U.S. or international universities."

It is noted that in a letter dated November 7, 2001, the assistant vice president and special counsel to the president of Queens College states, in part, as follows:

> Contrary to his statement, Dr. Itzkowitz does not have the authority to grant college-level credit at Queens College of The City University of New York. The Office of Undergraduate Admissions determines whether or not to give credit to students for college-level courses taken at another college/university, domestic or foreign. While the Office of Undergraduate Admissions consults with faculty in the <u>same</u> academic discipline as the course(s) being evaluated, no individual faculty member has authority to grant credit for academic course work completed at another institution of higher education. (Emphasis in original.)

In addition to Dr. Itzkowitz's evaluation, the record also contains an evaluation from Dr. William Edelson of ICETS, another company that specializes in evaluating academic credentials. Dr. Edelson concluded that the beneficiary possesses the equivalent of Bachelor of Science Degree in Management Information Systems (MIS). Although Dr. Edelson indicates that his teaching experience, along with his research and consulting experience, places him "in a position to evaluate whether the credentials of [the beneficiary] are equivalent to a baccalaureate degree," he does not provide evidence that he is 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. In view of the foregoing, neither evaluator has demonstrated that he fulfills the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*). Furthermore, both evaluations are based upon the beneficiary's education, training and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*3*). Thus, the evaluations carry no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 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 indicates that the beneficiary completed COBOL 85 computer training at the Advanced Technology (IAT), Nairobi, Kenya, Africa, and 26 weeks of training in "Network – Centered Computing Curriculum, which included module tests such as "Computer Overview, DOS, Computer Concepts, Windows NT, Word," and other related areas at NIIT, Nairobi, Kenya, Africa. The record also contains a letter, dated March 14, 2001, indicating that the beneficiary was registered for the "DNIIT Progamme – Software Engineering Course in e-technology" and had completed the first semester of the "Advanced Certificate in PC Applications (APA)" program and the following modules: "Programming Logics and Techniques, Unix Administration and Programming with C++." The record, however, contains no evidence such as completion certificates or documentation indicating the length of the training described in the March 14, 2001 letter from NIIT. Furthermore, as neither evaluator discussed the training described in NIIT's March 14, 2001, it appears that the beneficiary may not have completed such training. In view of the foregoing, the documentation does not establish equivalence to a baccalaureate degree in MIS or any other computer-related field. *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. On appeal, counsel states that the beneficiary has more than 13 years of computer programming work experience in India and Kenya. The record, however, contains only one employment letter for the beneficiary's employment at Fidelity Commercial Bank Ltd. from July 19, 1999 to May 15, 2001. Furthermore, as described by the employer, the beneficiary's duties did not appear to involve the theoretical and practical application of programming

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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).

analysis. Nowhere in the letter is a comprehensive description of the beneficiary's duties. No specificity to the beneficiary's daily activities or his level of responsibility is provided. 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 programming analysis. Furthermore, the employer does not indicate 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. The AAO notes that the evaluator from Morningside Evaluations and Consultations cannot be considered a "recognized authority" because he did not provide sufficient information as to how his conclusions regarding the beneficiary's training were reached. The evaluator does not indicate that the beneficiary completed any essential programming courses such as C/C++. The AAO also notes that the evaluator from ICETS cannot be considered a "recognized authority" because, again, he did not provide sufficient information as to how his conclusions regarding the beneficiary's work experience were reached. It appears that he based his conclusions regarding the beneficiary's employment experience entirely on information provided by the beneficiary in his resume. The record contains no independent evidence regarding the beneficiary's specific duties while employed at Fidelity Commercial Bank, Ltd., in Kenya. In addition, although the evaluator asserts that the beneficiary was employed as an "Analyst Programmer" at The Bank of Baroda, in Kenya, the record contains no employment letter from such business.

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 because the petitioner has not clearly defined the beneficiary's proposed duties. For this additional reason, the petition may not be approved.

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.