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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 02 076 50448 Office: CALIFORNIA SERVICE CENTER Date: MAY 04 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.

Mari Johnson

for 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 an almond huller, sheller and processor that seeks to employ the beneficiary as a computer programmer. 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, an expert opinion letter, and a variety of materials that had been submitted previously.

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 computer programmer. The petitioner indicated in an undated letter that it wished to hire the beneficiary because he possessed the equivalent of a bachelor's degree

through his education and work experience. The petitioner requires a baccalaureate degree or its equivalent in business administration, international business, or computer science 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. The director made his decision based on the position being a systems analyst, rather than a computer programmer. On appeal, counsel states that the beneficiary is qualified for the position because he has the equivalent of four years towards a degree in international business, 2/3 of a year of education at a U.S. university, six months of experience working as a computer programmer for the petitioner, and more than three years of training for a German corporation. Counsel asserts that the beneficiary "possesses 5 2/3 years of equivalent university training in business administration with emphasis in computer programming." Counsel also submits a letter from a professor in the computer sciences department at the University of California, Los Angeles, and resubmits a copy of an evaluation from the Foundation for International Services.

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 any field of study. 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 resubmits an evaluation from the Foundation for International Services, a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary possesses the equivalent of a bachelor's degree in international business from an accredited U.S. college or university. However, the evaluation is 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 evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

On appeal, counsel submits a letter from D. Stott Parker, a professor and vice chair of the computer science department at the University of California, Los Angeles. Counsel asserts that Professor Parker "meets the regulatory equivalence criteria for an evaluation by a college official under. [sic] 8 C.F.R. § 214.2(h)(4)(iii)(D)(1)." This is a misstatement, however. Professor Parker does not assert, nor is any evidence provided to show, that he "has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which as a program for granting such credit based on an individual's training and/or work experience." He is clearly well educated, and a successful professor, but those qualifications do not meet the terms of the regulations; as such, Professor Parker's letter cannot be considered in making a determination that the beneficiary has the equivalent of a degree in a specific specialty.

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

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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).

(v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record contains the above-mentioned evaluation of the beneficiary's education and training. The evaluator found the beneficiary's education equivalent to four years "toward" a bachelor's degree in international business. The record also contains one employment letter and a transcript from a U.S. university for two quarters of class work.

The AAO concurs with counsel that the proffered position is a computer programmer and not a systems analyst, as determined by the director. A degree requirement for a computer programmer would also be in computer science, however, rather than a general business administration degree. Nonetheless, the documentation does not establish that the beneficiary's education, training and experience are equivalent to a baccalaureate degree in any subject.

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. The only information provided was a very general letter from KSB Aktiengesellschaft, stating that the beneficiary received "fundamental training" in the fields of sales/marketing; purchasing; production; personnel management; and accountancy. The letter also stated that following a three-year training period, the beneficiary worked for three months in the company's "organizational department." The beneficiary's training and duties did not appear to involve the theoretical and practical application of computer science. Counsel asserts that the beneficiary has been working for the petitioner for six months in the proffered position, but no evidence was submitted to substantiate this statement. 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 computer science. Furthermore, neither employer indicates 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.

There is insufficient evidence that the beneficiary has recognition of expertise. The AAO notes that Professor Parker might be considered a "recognized authority," but all of the information required to establish an individual as a recognized authority was not included in his letter. The letter does not include Professor Parker's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom, as required by 8 C.F.R. § 214.2(h)(4)(ii). In addition, even if he had established himself as a recognized authority, the regulations require recognition of expertise by two recognized authorities in the field.

Counsel asserts that the director's decision was procedurally flawed in that the request for evidence did not reference the need for a degree in a specific specialty. The director did, however, state:

> The beneficiary does not have a degree as required by the specialty. Since the beneficiary's degree is in international business provide evidence that the beneficiary has 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.

While it is acknowledged that the director did not directly raise the issue of what specific specialty would be required for the proffered position, he made clear that the beneficiary's background did not appear to be

adequate to establish his eligibility to perform a specialty occupation. This put the petitioner on notice regarding the director's concerns, and the AAO finds that this does not constitute procedural error.

Finally, the Administrative Appeals Office turns to the denial of the beneficiary's application to change his status that was filed on Form I-129. 8 C.F.R. § 248.3(a). Regulations governing the change of a nonimmigrant classification prohibit a petitioner or beneficiary from appealing the denial of an application to change status. 8 C.F.R. § 248.3(g). Accordingly, this issue will not be addressed further in this decision.

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.

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.