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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

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[redacted]

OCT 06 2009

FILE: EAC 07 147 52212 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, 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 information technology company and seeks to employ the beneficiary as a programmer analyst. Thus, 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).

In denying the petition, the director determined that the beneficiary was not qualified to perform the duties of a specialty occupation. Specifically, the director found that the beneficiary did not qualify to perform the duties of the proffered position through a combination of education and experience. On appeal, counsel for the petitioner contends that the director's conclusion was erroneous, and additional evidence in support of the beneficiary's qualifications is submitted.

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 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 also 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 AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service

center's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; (5) the Form I-290B and its attachments.

The petitioner is seeking the beneficiary's services as a programmer analyst. In its letter dated March 20, 2007, the petitioner claimed that the beneficiary is qualified for the position as evidenced by the credentials submitted in support of the petition. With regard to the beneficiary, the petitioner indicated that he held a Bachelor's Degree in Mechanical Engineering from Kakatiya University Faculty of Engineering & Technology in India, and that he is currently employed by Verizon in India.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training did not qualify him for the specialty occupation. On appeal, the petitioner states that the beneficiary is qualified to perform the duties of the proffered position, and submits a second credential evaluation in support of this contention.

The AAO will first address the new evidence submitted on appeal, which consists of a credentials evaluation from [redacted] of M.E.I. Services (M.E.I.), dated November 15, 2007. This evaluation is the second evaluation submitted by [redacted] of M.E.I. It is noted that the director found deficiencies in the first evaluation submitted prior to adjudication of this petition, and noted them in his denial. As a result, this evaluation is submitted to address those deficiencies.

In its response to the director's request for further evidence, the petitioner submitted the first evaluation from M.E.I. dated July 16, 2007, in which [redacted] claims to have "reviewed the educational credentials, specialized training and progressively responsible experience of [the beneficiary]." The director found this evaluation insufficient and based the denial in part on these deficiencies,

On appeal, counsel claims in its November 29, 2007 letter that "we have had the Evaluator whom originally provided the evaluation to issue a second evaluation of the beneficiary's education and work experience." The AAO notes that the evaluator reaches an additional conclusion not previously reached or addressed in the initial evaluation with regard to the beneficiary's qualifications. On appeal, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). In this matter, it appears that the petitioner had the evaluator issue a second evaluation reaching the conclusion it felt would satisfy USCIS's requirements. The AAO will afford no weight to this second evaluation.[1]

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 specific specialty. The AAO concurs with the director's finding that, based on the initial evaluation from M.E.I., the beneficiary possesses the equivalent of a U.S.

[1] It should be noted that, in order to evaluate a beneficiary's training and/or experience, an evaluation must be issued 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. In this matter, [redacted] has not indicated that he has such authority. Therefore, this evaluation is acceptable for evaluating foreign educational credentials only.

bachelor's degree in mechanical engineering. However, because the field of computers is entirely different from mechanical engineering, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*) and possesses the equivalent of a United States baccalaureate degree in a specialty related to the proffered position.

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.

Upon review, the AAO concurs with the director's conclusions. The record contains evidence that the beneficiary holds the equivalent of a U.S. bachelor's degree in mechanical engineering. Therefore, the beneficiary's educational credentials are undisputed in this matter. However, since the degree is unrelated to the proffered position, USCIS must evaluate the beneficiary's qualifications. A review of the record demonstrates that the petitioner submitted none of the evidence outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*)-(*4*).

When USCIS 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[2];

(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 contains the beneficiary's academic transcript, the beneficiary's resume, and letters from four of the beneficiary's past employers. While these employment letters corroborate the claimed employment history outlined on the beneficiary's resume, these letters fail to demonstrate that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. Moreover, there is no evidence that the beneficiary has recognition of expertise in the industry, membership in a recognized association in the specialty occupation, or published material by or about the beneficiary. Thus, absent corroborating evidence as outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*), the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge in a field related to the proffered position or that the beneficiary has recognition of expertise in the industry.

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. For this reason, the petition will be denied.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition is denied.

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[2] *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).