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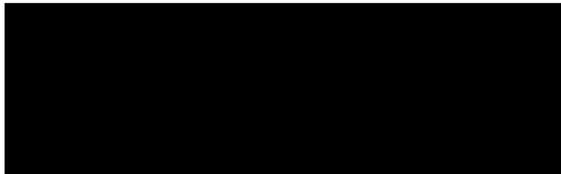
FILE: EAC 06 150 53077 Office: VERMONT SERVICE CENTER Date: OCT 04 2007

IN RE: Petitioner:
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:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition and the petitioner filed an appeal. The matter is now before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner provides management consulting services. It seeks to employ the beneficiary as a research analyst. Accordingly, it 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).

On July 17, 2006 the director denied the petition determining that the record did not establish that the beneficiary had obtained the equivalent of a baccalaureate or higher degree in the specific specialty required by the position. On appeal, counsel for the petitioner claims the beneficiary has a bachelor of arts degree from Delhi University in India, professional certifications, and prior work experience that qualifies her for the proffered position of research analyst.

The record of proceeding before the AAO contains: (1) the Form I-129 filed April 26, 2006 and supporting documentation; (2) the director's May 8, 2006 request for further evidence (RFE); (3) counsel's July 3, 2006 response to the director's RFE; (4) the director's July 17, 2006 denial decision; and (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before rendering its decision.

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) experience in the specialty equivalent to the completion of such 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 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;
- (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.

At the time of filing the petition, the petitioner indicated that it wished to hire the beneficiary as a research analyst to work as a member of its research design, data collection, and analysis team. The petitioner stated that the person in this position:

[W]ill provide experienced database services for researching and entering information into health-related databases, abstracting and Internet searches for databases, literature reviews and proposal development. The ideal candidate for this position is required to have the minimum of a Bachelors degree and knowledge of marketing and technology concepts, prior experience in research, database analysis, and proficiency in I.T. applications, MS Word, spreadsheet, database, power point, internet research capabilities.

The petitioner added:

A Research Analyst at [the petitioner] is required to perform maintenance of assigned health and educational materials databases, including but not limited to cataloging, indexing and abstracting records. The person in this position will follow established protocols for database management and maintenance; collect and analyze data; support established programs to identify factors, solicit, and acquire new documents for the databases; maintain the superior level of comprehensiveness and quality of the database materials; and prepare original abstracts or edit author abstract and assigns descriptors to all materials.

A Research Analyst at [the petitioner] will perform extensive research and analysis and prepare reports of findings, which involves: quantitative and qualitative program and organizational evaluation; outcome evaluation; process evaluation – both summative and formative; questionnaire and survey development; qualitative data collection instrument development; qualitative and quantitative data collection; qualitative and quantitative data analysis; international evaluation and focus groups; product development and evaluation; ethical research design; focus groups; recruitment; tracking and follow-up evaluation.

A Research Analyst at [the petitioner] is required to manage database-marketing projects and monitor results. S/he will be responsible for responding to search-related requests and to specific issues by searching and retrieving information from in-house technical resources and systems. S/he will be involved with various projects which utilize technical skills and knowledge of various computer applications.

The petitioner claimed that the beneficiary is qualified to perform the duties of the position as she had obtained a Bachelor of Arts degree from Delhi University, India and that additionally the beneficiary had obtained certification as a Business Professional Programmer from the Ministry of Communications & Information Technology, India, and that she was proficient in a number of computer languages and programs.

The petitioner provided a one-page evaluation prepared by Career Consulting International indicating the evaluator had reviewed a bachelors of arts document from the University of Delhi, India and a DOEACC "O" Level Examination document from DOEACC Society, India. The evaluator opined that these documents demonstrated the beneficiary had attained the equivalent of a Bachelor of Arts from an accredited institution of higher learning in the United States.

The record also contains a copy of a "provisional certificate" issued to the beneficiary by "School of Correspondence Courses and Continuing Education University of Delhi" indicating that the beneficiary had been a student from July 2000 to October 2003. The "provisional certificate" identified the subjects offered as English, Hindi, Economics, and Political Science. The record includes the beneficiary's statement of marks for examinations in the four courses (English, Hindi, Economics, and Political Science) for the 2001, 2002, and 2003 years.

The record also includes a copy of a Certificate of Business Professional Programmer awarded to the beneficiary on November 28, 2002 issued by the DOEACC Society, an autonomous body of Department of Information Technology, Ministry of Communications & Information Technology, Government of India for accreditation of Computer Courses under the AICTE-DIT Scheme. The certificate notes that the beneficiary had obtained a "C" grade having successfully qualified in all the modules of the DOEACC 'O' level examination. The record includes two documents showing the beneficiary's results from DOEACC 'O' Level Examinations taken January 2001 and July 2001.

The record also contains a consolidated marksheet for the 'A' level examination but does not contain a document showing that the beneficiary had completed all the necessary elements to qualify for an 'A' level certificate.

On May 8, 2006 the director noted the one-page evaluation and requested a detailed explanation of the material evaluated and whether the collegiate training was post-secondary education.

In a July 3, 2006 response, counsel for the petitioner provided a June 15, 2006 evaluation prepared by World Education Services (WES). The evaluator indicated upon review: (1) a Delhi Senior School Certificate issued in 1999 is equivalent to a high school diploma in the United States; the record does not contain a copy of this document; (2) a DOEACC 'O' Level Examination awarded by the Department of Electronics Accreditation of Computer Courses in the field of computer science in 2002 is the equivalent of one year of undergraduate study in the United States; (3) a DOEACC 'A' Level Examination Certificate awarded by the Department of Electronics Accreditation of Computer Courses in the field of computer science in 2003 is the equivalent of one year of undergraduate study in the United States; the record does not include a copy of this document; and (4) a Bachelor of Arts credential issued in 2003 by the University of Delhi for three years of study in liberal arts is the equivalent of three years of undergraduate study in the United States. The evaluator

indicates that high school graduation is the admission requirement for the DOEACC 'O' Level Program, the DOEACC 'A' Level program, and the Bachelor of Arts program. The evaluator does not explain the significance of the term "Provisional Certificate" in relation to the beneficiary's bachelor of arts credential. The evaluator also includes a list of each course taken and assigns a number of U.S. semester credits to each course. The evaluation does not provide an explanation for the number of semester credits allocated to each course listed. Neither does the evaluator identify where he or she obtained the course synopsis for each level of English, Hindi, Economics, and Political Science studied. The evaluator totals the number of credits to conclude that the beneficiary has the equivalent of five years of undergraduate study in computer science and liberal arts at a regionally accredited institution in the United States.

On July 17, 2006, the director denied the petition. The director observed that the Department of Labor's *Occupational Outlook Handbook (Handbook)* reported that market and survey researchers should take courses in business, marketing, and consumer behavior, and other liberal arts and social science courses including economics, psychology, English, and sociology and that courses in mathematics, statistics, sampling theory and survey design and computer science are extremely helpful. The director noted that the beneficiary had not completed courses in business, marketing, consumer behavior, psychology, sociology, statistics, sampling theory and survey design. The director also noted that the *Handbook* indicated that aspiring market researchers should gain experience gathering and analyzing data, conducting interviews or surveys and writing reports on their findings and that the petitioner had not provided evidence the beneficiary had gained such experience. The director concluded that the record did not establish that the beneficiary had obtained the equivalent of a baccalaureate degree or higher in the specific specialty required by the position.

On appeal, counsel indicates that although the petitioner used the internal title of "research analyst" for the proffered position, the duties of the position comprised the duties of a market research analyst. Counsel asserts, contrary to the director's determination, that the beneficiary had taken several courses in economics, political science, English, and business systems while completing her bachelor's degree. Counsel refers to the June 15, 2006 WES evaluation submitted in response to the director's RFE and contends that the beneficiary obtained a bachelor of arts degree as well as completing extensive coursework and training in "Advanced Diploma in Computer Applications" and obtained certification as a business professional programmer. Counsel indicates that the beneficiary is proficient in a number of computer languages, Statistical Analysis: SPSS, Internet technologies and programming practices. Counsel also references the *Handbook's* report that market research analysts should have knowledge of the English language, computers and electronics, including circuit boards, processors, chips, electronic equipment, and computer hardware and software applications and programming. Counsel also references the beneficiary's prior work experience in India as an assistant EDP manager.

Counsel's assertions are not persuasive. Neither the one-page Career Consulting International evaluation nor the WES evaluation substantiates the beneficiary has the equivalent of a baccalaureate or higher degree required by the specialty occupation from an accredited college or university. As the director observed in the RFE, the initial evaluation did not evaluate the beneficiary's academic credentials; rather the evaluator concluded, without discussion or analysis, that a bachelor of arts document from the University of Delhi, India and a DOEACC "O" Level Examination document from DOEACC Society, India showed the beneficiary had the equivalent of a baccalaureate or higher degree. The evaluator did not offer an opinion regarding the type of courses or the specific discipline the beneficiary studied. The AAO concurs with the

director's determination that the Career Consulting International evaluation is conclusory and not probative in establishing the beneficiary's qualifications to perform the tasks of a market research analyst.

Likewise, the AAO finds that the WES evaluation is insufficient to establish the beneficiary's qualifications to perform the duties of a specialty occupation. The WES evaluator does not conclude that the beneficiary has the equivalent of a baccalaureate degree in computer science and liberal arts from a regionally accredited institution in the United States. Rather, it finds that the beneficiary has the equivalent of five years of undergraduate study. Further, the WES evaluator does not explain the conclusion that the beneficiary obtained the equivalent of five years of university-level coursework in three years. The WES evaluator does not explain how the beneficiary's computer courses and bachelor's level courses, taken during the same time period (2001-2003) could equal the progressively specialized knowledge attained throughout four years at a college or university in the United States. The WES evaluator does not note that both the beneficiary's computer courses and the bachelor's courses required only a high school diploma for admission. The AAO finds that to establish a fourth or fifth year of university-level training, the initial three years of training must provide an undergraduate basis for a continuation of higher-level learning. The AAO observes that the beneficiary's coursework in computers resembles coursework taken at a vocational or technical school in the United States. The WES evaluator does not explain why such courses should be considered courses that convey theoretical knowledge rather than technical skill. Moreover, the AAO observes that the record does not contain a document showing that the beneficiary completed all the necessary elements to be issued an 'A' level certification. The WES evaluator although referencing this document does not supply it for the record. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In addition, the WES evaluator does not explain the significance of a provisional certificate for a bachelor of arts degree. The WES evaluator does not identify the source used to outline the course synopsis for each level of English, Hindi, Economics, and Political Science, the beneficiary studied. Neither is such synopsis included in the record. The WES evaluator does not analyze the beneficiary's coursework in English, Hindi, Economics, and Political Science and does not indicate how he or she assigned a credit number to each particular course. The record does not establish that the beneficiary's coursework to obtain a bachelor of arts degree in India is equivalent to or similar to the courses studied at a university or college in the United States resulting in a bachelor's degree in a specific discipline. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

In this matter, the record suggests that the beneficiary has attained a three-year general degree from the "School of Correspondence Courses and Continuing Education," University of Delhi that is the equivalent to two to three years of study at a United States regionally accredited college or university. A three-year Bachelor of Arts degree from India is not the equivalent of a United States baccalaureate degree because the degree does not require four years of study. *See e.g. Matter of Shah*, 17 I&N Dec. 244 (Comm. 1977). Moreover, the record does not sufficiently define the beneficiary's course of study when obtaining this general degree to substantiate that it is equivalent to a United States baccalaureate or higher degree. The AAO observes that a general degree is insufficient to qualify the beneficiary to perform the services of a specialty

occupation, unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. The beneficiary's coursework must indicate that he or she obtained knowledge of the particular occupation in which he or she will be employed. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968). The AAO acknowledges that the beneficiary has received some vocational training in personal computer software, internet and web designing, business systems, and programming and problem solving through 'C' language as indicated by her certificate of business professional programmer. The AAO does not find the vocational training equivalent to undergraduate theoretical study at a university or college in the United States. Furthermore, the AAO does not find that the record supports the conclusion that the beneficiary's three years of study, including both the vocational training and the bachelor of arts general degree, is equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university.

The AAO acknowledges counsel's reference to the beneficiary's work experience. However, the record contains no supporting documentation from the beneficiary's employer and does not include evidence that the beneficiary's foreign work experience included the theoretical and practical application of the specialized knowledge required by a specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

The AAO finds that the petitioner has not provided evidence to establish that the beneficiary is eligible to perform the services of a specialty occupation pursuant to any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C).

Beyond the decision of the director, the petitioner has not established that the proffered position is a specialty occupation. Although the petitioner provides a lengthy description of the duties of the position, it is general and does not provide a comprehensive understanding of the actual duties of the proffered position. The AAO is unable to conclude from the generality of the description whether the beneficiary's duties will include entering information into databases and gathering, indexing, and cataloging information or will include the analysis and evaluation of information. The AAO notes the petitioner's business is providing management consulting services; however, the petitioner has not provided a description of the proffered position's daily duties in relation to its specific business interests so that a conclusion may be drawn that the proffered position is a specialty occupation. As the petition will be denied for the reasons stated above, this issue will not be discussed further.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. Accordingly, the petition will be denied.

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