



U.S. Citizenship
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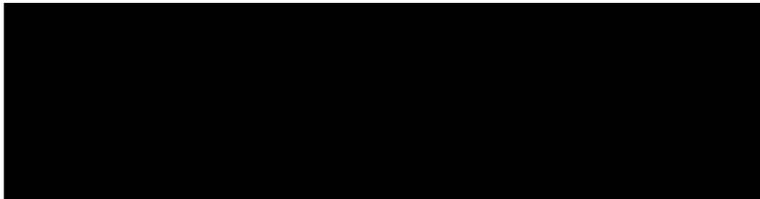


FILE: SRC 05 212 51700 Office: TEXAS SERVICE CENTER Date: MAR 19 2008

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 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 of the Texas Service Center revoked a prior approval of the Form I-129 petition by decision dated June 19, 2006 on the grounds that the beneficiary is not qualified to perform the duties of a specialty occupation, and because the petitioner failed to respond to the director's Notice Of Intent to Revoke (NOIR). The matter is now before the Administrative Appeals Office (AAO) on appeal. The petition shall be remanded to the director for entry of a new decision.

The petitioner is a provider of information technology services and solutions. It seeks to employ the beneficiary as a SAP SD functional consultant 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 record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's notice of intent to revoke (NOIR); (3) the director's decision revoking the Form I-129 petition; and (4) Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The director issued a NOIR on May 12, 2006. Pursuant to 8 C.F.R. § 214.2(h)(11)(B)(iii)(B), the petitioner may submit evidence in rebuttal to the director's NOIR within 30 days of receipt of the notice. The director shall then consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. As noted above, the director revoked the petition on the grounds that the beneficiary is not qualified to perform the duties of a specialty occupation, and because the petitioner failed to respond to the director's NOIR. On appeal, the petitioner has submitted sufficient evidence to overcome the director's finding that the petitioner failed to respond to the NOIR. The record contains evidence that the petitioner did respond to the NOIR within the time permitted by regulation for response. As such, the director's revocation shall be withdrawn and this matter remanded for the director to consider all evidence of record, including the petitioner's response to the NOIR dated June 5, 2006. The director may request such additional evidence as she deems necessary in rendering her opinion.

It should be noted that the present record does not establish that the beneficiary is qualified to perform the duties of the proffered position, which requires a bachelor's degree in computer science, information systems or computer engineering. The two evaluations submitted by the Foundation for International Services, Inc. on July 15, 2005 and May 24, 2006 both conclude that the beneficiary's foreign education is equivalent to a master's degree in business administration, and a bachelor's degree in business administration with a concentration in computer science. In making the evaluations, the evaluator considered the computer training obtained by the beneficiary at Aptech Computer Education (Aptech) to represent an additional year of study in computer science. The evaluator did not explain how coursework at Aptech, taken in 1998 and 1999 are equivalent to an additional year of study in computer science, as the beneficiary was also attending Bharathidasan University in pursuit of his MBA in 1998 and 1999. Further, a third evaluation indicates that the Aptech Computer Education School is equivalent to two terms of training in computer information systems from a private computer school in the United States. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The training may not, therefore, be considered for degree equivalence purposes. The referenced evaluations do not establish that the beneficiary holds a bachelor's degree in business administration with a concentration in computer science.

The third credentials evaluation submitted by the petitioner concludes that the beneficiary's foreign education and work experience is equivalent to a bachelor's degree in business administration with a concentration in management information systems. A credentials evaluation service may evaluate, for degree equivalence purposes, an individual's foreign education only, not past work experience. Work experience may be evaluated, for degree equivalence purposes, only by 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. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The record does not establish that the evaluator has the requisite authority.

On remand, the director may request clarification of these issues and any other issues bearing on the regulatory requirement for eligibility.

As always, the burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director to enter a new decision commensurate with the directives of this opinion, which, if adverse to the petitioner, shall be certified to the AAO for further review.