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U.S. Citizenship
and Immigration
Services

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FILE: LIN 03 258 54746 Office: NEBRASKA SERVICE CENTER Date: JUL 25 2005

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 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, 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 provides engineering and information technology consulting services. It 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 § 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 proffered position is not a specialty occupation and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief and a copy of the petitioner's Internet job posting for the proffered position, as well as copies of previously submitted documentation.

The AAO will first address the director's conclusion that the position is not a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (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. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's August 21, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to information on the petition and the petitioner's August 21, 2003 letter, the proffered position is that of a computer analyst, with duties that entail designing and developing dynamic applications for Biology-related applications. In response to the director's request for evidence, the petitioner indicated that the proffered position is that of a Bio-Informatics Consultant, with duties that entail coordinating with biologists and systems engineers the transfer of technical information into schematics, and schematics to design. The petitioner indicated that the beneficiary's foreign bachelor's degree in zoology and her U.S. master's degree in nutrition qualify her for this position.

The director found that the proffered position was not a specialty occupation because the petitioner made material changes in the employment conditions after the initial filing and, therefore, had not established eligibility at the time of filing the nonimmigrant visa petition.

On appeal, counsel states, in part, that the proffered position is that of a programmer analyst, and the more detailed description of the proffered position did not constitute a material change. Counsel states further that both the initial description of duties and the expanded version are focused on a biology-related field. Counsel also states that the proposed duties are so specialized and complex as to require a bachelor's degree.

Information on the petition reflects the "job title" of the proffered position as "programmer analyst" and the "nontechnical description of job" as "consultant in Bio-Informatics area." According to a "web definition," Bioinformatics is the science of managing and analyzing biological data using advanced computing techniques. A review of the initial description of duties and the expanded description, discussed above, supports counsel's assertion that there were not material changes in the employment conditions after the initial filing. As such, the petitioner has overcome this portion of the director's objections.

A review of the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, finds that many employers seek applicants who have a bachelor's degree in computer science, information science, or management information systems (MIS) for programmer-analyst positions. As such, a programmer-analyst position may qualify as a specialty occupation. It cannot be determined that the proffered position is a specialty occupation, however, because the nature of the petitioner's business and the nature of the specific tasks that would engage the beneficiary are unclear. Although the petitioner claims on the petition that it was established in 1997 and has 12 current employees, and further maintains in its August 21, 2003 letter that it is a known consultant in information technology and engineering solutions, the record contains no evidence in support of these claims, such as federal income tax returns and quarterly wage statements. Furthermore, the petitioner provides only "projected" gross and net annual incomes on the petition. 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)). The generalized terms used to describe the proposed duties – such as "diversify[ing] into various cross-functional areas" and coordination "throughout the application development lifecycle" – do not provide a basis for the AAO to determine that the beneficiary's work would require at least a bachelor's degree level of knowledge in any specific specialty. In view of the foregoing, the petitioner has failed to establish that it will employ the beneficiary as a full-time programmer

analyst/Bio-Informatics consultant, and that the beneficiary will be coming to perform services in a specialty occupation, in accordance with Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 101(a)(15)(H)(i)(b).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation.

The AAO will now address the director's conclusion that the beneficiary is not qualified to perform the duties of a specialty occupation.

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 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 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 she has a U.S. Master of Science degree in general biochemistry. Counsel submits a letter from Maurille J. Fournier, Ph.D., Professor Emeritus at the University of Massachusetts's Department of Biochemistry and Molecular Biology, as supporting evidence.

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

- Copy of a "Senior School Certificate Examination," dated May 27, 1994, issued to the beneficiary by the Central Board of Secondary Education in Delhi, India;

- Copy of a certificate from Aptech Computer Education in India, reflecting that the beneficiary enrolled in “a short term course of 120 hrs duration,” entitled “Oracle & Developer 2000,” in 1998;
- Copies of the beneficiary’s Bachelor of Science degree in Zoology awarded by an Indian institution on July 25, 1999, and transcripts;
- Copy of a certificate, issued by an Indian institution on August 20, 1999, showing that the beneficiary passed the “Diploma in Dietetics and Applied Nutrition Examination”;
- Copy of the beneficiary’s Master of Science degree awarded by the University of Massachusetts on September 1, 2003;
- Copy of the beneficiary’s “Unofficial Transcript of Graduate Work” from the University of Massachusetts;
- Letter, dated August 28, 2003, from [REDACTED] Ph.D., Associate Professor and Graduate Program Director at the University of Massachusetts’ Department of Nutrition, School of Public Health, who certifies that the beneficiary completed all the requirements for the Master of Science degree from the Department of Nutrition on July 3, 2003;
- Letter, dated November 14, 2003, from [REDACTED] Lecturer at the Department of Biology, University of Massachusetts, who states, in part, that the beneficiary worked for the Department of Biology as a teaching assistant for the Introductory Biology Laboratory course, from August 2000 to January 2003;
- Letter, dated November 14, 2003, from [REDACTED] Department Head of the Department of Microbiology at the University of Massachusetts, who states, in part, that the beneficiary worked for Dr. [REDACTED] in the Department of Microbiology at the University of Massachusetts from August 1999 to December 1999;
- Employment Verification Letter, dated December 8, 2003, from Cici Hyde, Administrative Assistant for the Department of Nutritional Science and Toxicology at the University of California at Berkeley, who states, in part, that the beneficiary worked as a Visiting Student Researcher in the Department of Nutritional Sciences and Toxicology at the University of California, Berkeley, from May 2001 to August 2001;
- Letter, dated December 8, 2003, from [REDACTED] Ph.D., Research Scientist at Baystate Health System, who states, in part, that the beneficiary trained under her in the Department of Veterinary and Animal Science at the University of Massachusetts;
- Letter, dated December 12, 2003, from [REDACTED] Ph.D., Professor Emeritus at the University of Massachusetts, Department of Biochemistry and Molecular Biology, who states, in part, that the beneficiary completed an advanced course in General Biochemistry that included a module on the Principles of Bioinformatics;

- An opinion letter, dated January 13, 2004, from an evaluator at Multinational Education & Information Services, Inc., who states, in part, that the beneficiary is "well-qualified" to perform the duties of the proffered position; and
- The beneficiary's resume and a list of her presentations and publications.

The petitioner's labor condition application designated the proffered position as Programmer Analyst. Upon review of the record, however, 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. As discussed above, a review of the *Handbook*, 2004-2005 edition, finds that many employers seek applicants who have a bachelor's degree in computer science, information science, or management information systems (MIS) for programmer-analyst positions. In this case, the beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in a computer-related field, 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.

The record contains an evaluation from the Multinational Education & Information Services, Inc., a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary is qualified for the proffered position based on her 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).

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 occupation¹;
- (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 also contains various employment letters and training certificates, including a copy of a certificate from Aptech Computer Education in India, reflecting that the beneficiary enrolled in "a short term course of 120 hrs duration," entitled "Oracle & Developer 2000," in 1998. The record also contains a letter from [REDACTED] Ph.D., Professor Emeritus at the University of Massachusetts, Department of Biochemistry and Molecular Biology, who states, in part, that the beneficiary completed an advanced course in General Biochemistry that included a module on the Principles of Bioinformatics. This documentation, however, does not establish equivalence to a baccalaureate degree in a computer-related field. The computer-training certificate from India does not even indicate whether the beneficiary completed the course. In addition, the petitioner did not submit any independent evidence to illustrate how any of this training relates to the completion of a baccalaureate degree in a computer-related field. 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)).

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).

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. As described by each employer, the beneficiary's duties did not appear to involve the theoretical and practical application of programming analysis/Bio-Informatics consulting. 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/Bio-Informatics consulting.

Finally, there is insufficient evidence that the beneficiary has recognition of expertise. The AAO notes that the evaluator from Multinational Education & Information Services, Inc. cannot be considered a "recognized authority" because the evaluator did not provide his qualifications as an expert; no resume or other evidence was attached to the evaluation.

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.