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U.S. Citizenship
and Immigration
Services



APR 25 2005

FILE: EAC 03 028 51283 Office: VERMONT SERVICE CENTER Date:

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, 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 a software development and consulting business that seeks to employ the beneficiary as a database administrator. 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 beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional evidence, including a new credentials evaluation.

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 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 database administrator. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree with Oracle Certification.

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 his education and training are the U.S. equivalent of a bachelor's degree in management information systems. Counsel submits copies of college curricula and an evaluation from Multinational Education & Information Services, Inc. as supporting documentation.

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

- Copies of a Bachelor of Education degree in education and Sanskrit and a Master of Arts degree in economics issued to the beneficiary by an Indian institution on December 15, 1999;
- Copy of "Passing Certificate" indicating that the beneficiary passed "The Degree of B. Ed. Examination" held by an Indian institution in April 1999;
- Copy of "Passing Certificate" indicating that the beneficiary passed the "M.A. (Final Examination)" held by an Indian institution in April 1998;
- Certificate, issued on June 19, 1997, showing that the beneficiary passed the M.A. in economics examination held in April – May 1997 at an Indian institution;
- Copy of a Bachelor of Arts degree in economics and a minor in Sanskrit literature issued to the beneficiary by an Indian institution on December 15, 1996;
- Copy of "Passing Certificate" indicating that the beneficiary passed the "B.A. (English Stream) Examination held by an Indian institution April 1996;
- Certificate, issued on June 23, 1995, showing the beneficiary's marks gained in passing the Second Year B.A. (English Stream) Examination held in April-May 1995; and
- Certificate, issued on June 22, 1994, showing the beneficiary's marks gained in passing the First Year B.A. (English Stream) Examination held in April 1994.

The record contains the following documentation related to the beneficiary's computer training and employment experience:

- Certificate, dated November 6, 2001, certifying that the beneficiary is recognized by The Oracle Certified Professional Program as an "Oracle8 Certified Database Administrator";
- Five Examination Score Reports, dated from July – November 2001, reflecting that the beneficiary passed the following Oracle training: "Introduction to Oracle: SQL and PL/SQL"; "Oracle8: Database Administration"; "Oracle8: Backup and Recovery Workshop"; "Oracle 8: Network Administration"; and "Oracle8: Performance Tuning Workshop";

- “Certificate Course in Computer Science – 6 months” awarded to the beneficiary on January 15, 1998, by Lakhotia Computer Centre;
- Employment letter, issued on September 4, 2000, from the director of Jeel Computer, indicating that the beneficiary worked as a programmer from June 1, 1999 – August 24, 2000; and
- Employment letter, dated May 5, 2003, from the director of Orion Computech Pvt., Ltd., indicating that the beneficiary has been employed since September 2000 as an Oracle Database Administrator/Programmer.

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 a field of study related to the proffered position. 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 Foreign Credential Evaluations, Inc., a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary possesses the equivalent of a Bachelor of Arts degree in economics and Sanskrit education with an additional concentration in computer science, and a Master of Arts in economics from a regionally accredited U.S. 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 an evaluation from the Multinational Education & Information Services, Inc., a company that specializes in evaluating academic credentials. The evaluator, [REDACTED] Ph.D., concludes that the beneficiary holds the equivalent of a bachelor's degree in management information systems and a master's degree in economics from an accredited U.S. university. As stated above, 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). Dr. [REDACTED] statement that he is currently a university computer science professor and has evaluated credentials for foreign graduates for over 15 years is noted. Also noted is counsel's statement on appeal that Dr. [REDACTED] is authorized to grant college level credits. The record, however, contains no independent evidence that Dr. [REDACTED] is 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, as required in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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;

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).

- (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 documentation does not establish equivalence to a baccalaureate degree in a computer-related field. In addition to the documentation related to the beneficiary's educational background, the record contains two employment letters and two computer-training certificates. Although counsel states on appeal that the beneficiary had one year of database administration education, the Oracle Certified Professional training certificate does not indicate the length of such training. Counsel also concludes that the beneficiary has a minimum of 40 credit hours following his four years of relevant professional experience. The evidence in the record indicates, however, that the beneficiary had only three years and three months of computer-related experience as of the filing date of the petition on November 1, 2002. Again, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). It is also noted that 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.

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.

Beyond the decision of the director, the AAO does not find that the petitioner has demonstrated that the H-1B alien is coming temporarily to the United States to perform services in a specialty occupation. Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 101(a)(15)(H)(i)(b). 8 C.F.R. § 214.2(h)(1)(ii)(B). Information on the petition reflects that the petitioner has 20 employees and a gross annual income of \$1.2 million. The numbers reflected on the petitioner's quarterly tax return and profit-and-loss statement, however, do not corroborate this information. For this additional reason, the petition may not be approved.

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.