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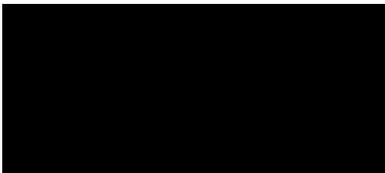


FILE: SRC 04 096 50436 Office: TEXAS SERVICE CENTER Date: JUN 15 2005

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 director of the service center 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 firm that seeks to employ the beneficiary as a programmer analyst. The petitioner, therefore, 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).

The director denied the petition because the beneficiary is not qualified to perform the proffered position. On appeal, counsel states that the beneficiary is qualified for the proffered position and submits additional evidence.

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. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a programmer analyst. The petitioner's January 30, 2004 letter indicates that a candidate must possess a baccalaureate degree in computer science, electronics, information systems, or a related area.

The director determined that the beneficiary is not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to any of the baccalaureate degrees described in the January 30, 2004 letter. On appeal, counsel submits additional evidence and states that the evaluation from International Credentials Evaluation and Translation Services (ICETS) establishes the beneficiary's qualifications for the proffered position based on his education and training.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform the proposed position.

The record contains a copy of the beneficiary's bachelor of commerce degree and transcript from The Maharaja Sagajirao University of Baroda in India, and training certificates and employment letters. It also contains two credentials evaluations. The evaluation from [REDACTED] a credentials evaluation service, states that based on the beneficiary's education and training, he possesses the equivalent to a bachelor of business administration in accounting with an additional concentration in computer programming from a regionally accredited university in the United States. The evaluation, submitted on appeal, from ICETS, a credentials evaluation service, states that the beneficiary's education and training are similar to the completion of a bachelor of science degree in management information systems (MIS) from an accredited institution of tertiary education in the United States.

The beneficiary does not hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university. 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1). Nor does the beneficiary 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. 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). Both credentials evaluators determined that the beneficiary's bachelor of commerce degree is equivalent to the completion of three years of academic study towards a baccalaureate degree from an accredited institution in the United States. 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; 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.

On appeal, counsel asserts that ICETS determined that the beneficiary holds the educational equivalent to a bachelor's degree in MIS. The evaluator's conclusion, however, is based on the beneficiary's training and 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). Because Foreign Credential Evaluation, Inc. is also a credentials evaluation service, it can only evaluate the beneficiary's educational credentials.

No evidence in the record establishes the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1), (2), or (4).

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;

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).

- (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 beneficiary completed six months of training in computer programming with Gateway Education and Training, Ahmedabad, India. He also completed a diploma in computer programming and applications (Windows) with Tulec Computer Education, a course with Brainbench, and requirements to become a Microsoft Certified Professional. No evidence describes the length of training or coursework with Tulec Computer Education and Microsoft.

The beneficiary has prior work experience as a software engineer with Global Tech (I) Pvt. Ltd.; a software executive (programmer) with Krupa Electronic; and a consultant and a project coordinator with NINtec B.V. Neither Global Tech (I) [REDACTED] describes the beneficiary's duties with any specificity. NINtec B.V. delineates the beneficiary's duties while employed there for about sixteen months; they involved the theoretical and practical application of specialized knowledge required by the specialty occupation. However, NINtec B.V. does not state whether this work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. Furthermore, no evidence establishes that the beneficiary has recognition of expertise.

A combination of the beneficiary's education, specialized training, and/or work experience is insufficient to establish that the beneficiary holds the equivalent of the degree required by the specialty occupation, which is a programmer analyst. As already discussed, the credentials evaluators determined that the beneficiary's bachelor of commerce degree is equivalent to the completion of three years of academic study towards a baccalaureate degree from an accredited institution in the United States. The beneficiary completed six months of training in computer programming with Gateway Education and Training. No evidence indicates the length of training with Microsoft, Tulec Computer Education, and Brainbench. Although the evaluator with Foreign Credential Evaluations, Inc. states that the beneficiary completed nine months of study in computer programming, and the evaluator with ICETS states that his training is equivalent to the completion of one year of coursework in computer science, no independent documentary evidence substantiates either statement. 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)). Only one of the beneficiary's prior employers described the beneficiary's duties as involving the theoretical and practical application of specialized knowledge required by the specialty occupation; nonetheless, this employer does not state whether this work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. No evidence establishes that the beneficiary has recognition of expertise. Thus, the petitioner fails to establish the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

The AAO notes that with respect to the submitted credentials evaluations, the evaluators reach different conclusions about the educational equivalence of the beneficiary's education and training. One evaluator states that he possesses the equivalent to a bachelor of business administration in accounting with an additional concentration in computer programming; the other that his education and training are equivalent to a bachelor of science degree in MIS. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The probative value of the evaluations is diminished because no independent evidence reconciles or explains the inconsistent conclusions about the educational equivalence of the beneficiary's education and training. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

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.