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FILE: WAC 04 066 52001 Office: CALIFORNIA SERVICE CENTER

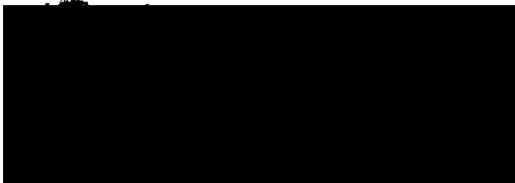
Date: NOV 02 2005

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 director of the California 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 developer of computer software and hardware. It seeks to employ the beneficiary as a programmer analyst 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 he found the beneficiary was not qualified to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief and new and previously submitted evidence. The AAO reviewed the record in its entirety before reaching its decision.

The only issue before the AAO is whether the beneficiary is qualified to perform the duties of the proffered position. In determining whether an alien is qualified to perform the duties of a specialty occupation, Citizenship and Immigration Services (CIS) looks to the petitioner to establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or 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.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (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 beneficiary does not possess a U.S. baccalaureate degree required by the specialty occupation or a foreign degree that is the equivalent of a U.S. baccalaureate degree required by the specialty. He has a three-year degree from the University of Calcutta in physics. Further, the proffered position does not require a license or certification. Accordingly, the AAO turns to the record before it to determine whether the beneficiary's

combined education, training and employment experience establish his eligibility to perform the duties of a specialty occupation under the fourth and final criterion at 8 C.F. R. § 214.2(h)(4)(iii)(C).

For the purposes of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), equivalence to a U.S. baccalaureate or higher degree shall mean the achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty, and shall be determined by one or more of the following requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D):

- (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.

On appeal, counsel contends that the petitioner's submission of two evaluations of the beneficiary's combined academic and employment experience satisfy the requirement at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). The AAO does not agree.

The first criterion allows a petitioner to establish a beneficiary's qualifications to perform the duties of a specialty occupation on the basis of training and/or work experience. Consideration of a beneficiary's academic background is provided for at 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), requiring the submission of an evaluation from a reliable credentials evaluation service specializing in the review of foreign educational credentials. Therefore, with regard to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), the AAO will consider only whether the submitted evaluations establish the beneficiary's past employment and training as the equivalent of a baccalaureate or higher degree.

At the time of filing, the petitioner provided an evaluation of the beneficiary's employment history from a professor at Medgar Evers College, the City University of New York, who teaches in the School of Business' computer science department. The professor states that he has the authority to grant college-level credit for training and/or experience at Medgar Evers College, which has a program for granting college level credit based on experience. That authority, as well as the existence of a program awarding academic credit for life experiences, is documented in a letter signed by the dean of the college's business school.

The professor's evaluation finds the beneficiary's four years and three months of work experience to be the equivalent of one year of academic studies toward a U.S. bachelor's degree in computer information systems. The AAO, however, will not accept this assessment of the beneficiary's previous employment.

While the professor describes the beneficiary's work history as one comprised of increasingly responsible employment and training in the computer field, the AAO finds the record to contain no evidence that would support such a conclusion, nor any that would allow the professor to find the beneficiary's past employment to be the equivalent of one year of academic study. With the exception of a brief statement offered by the beneficiary's current employer regarding his employment responsibilities since October 2003, the only document in the record that describes the beneficiary's duties for his various employers is his own resume. As the record does not contain independent evidence of the beneficiary's responsibilities during his various employments, it does not support the professor's equivalency finding. The AAO relies on expert evaluations as advisory opinions only. Where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept that opinion or may give it less weight. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The second evaluation of the beneficiary's employment experience, prepared by a professor teaching computer science courses at Princeton University, accompanies counsel's brief. While the professor's authority to grant academic credit for employment experience is documented by a letter from the chair of the faculty in the Department of Computer Sciences, that letter does not indicate that Princeton University has a program for granting such credit. Nor does the professor's evaluation state that his university has such a program. As there is no evidence in the record to establish that Princeton University has a program for awarding academic credit for training or employment experience, the AAO will also discount the second evaluation provided by counsel.

The petitioner has failed to establish the beneficiary as qualified to perform the duties of the proffered position based on his employment history and has submitted no evidence to satisfy the second, third or fourth criterion. Accordingly, the AAO will evaluate the beneficiary's background under the language at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), i.e., determine whether the beneficiary has acquired the equivalent of a degree required by the specialty occupation 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.

When evaluating a beneficiary's qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. The record must also establish that the beneficiary's training and/or work experience has included the theoretical

and practical application of the specialized knowledge required by the specialty occupation, that this experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation and that the beneficiary's expertise in the specialty has been recognized, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

At the time of filing, the petitioner submitted documentation of the petitioner's degree in physics from the University of Calcutta, along with his academic transcripts; a copy of the beneficiary's resume outlining his work experience from May 2000 to September 2003; copies of letters from two previous employers attesting to his employment; and a copy of a letter from his current employer briefly detailing his most recent work experience. The record also contains assessments of the beneficiary's academic experience completed by the two professors who provided the previously discussed evaluations of the beneficiary's work experience.

The AAO first considers the beneficiary's academic background in light of the assessments of that background prepared by the professors from Medgar Evers College and Princeton University.

Both professors find the beneficiary's three years of study at the University of Calcutta to be the equivalent of three years of college-level study in the United States. In support of their conclusions, they note their authority to grant academic credit for foreign educational credentials in the field of computer science and related sub-disciplines. The AAO finds the letters submitted by the dean of the Medgar Evers school of business and the chair of the Princeton computer sciences faculty to support the professors' claims regarding their expertise in evaluating foreign academic credits in the field of computer science. The AAO will, therefore, accept these evaluations of the beneficiary's university education as providing him with the equivalent of three years of university-level study toward a bachelor of science degree.

Accordingly, the AAO now turns to the record's documentation of the beneficiary's employment experience to determine whether it, when combined with his education, provides him with the equivalent of a baccalaureate degree in a field directly related to the proffered position. The AAO finds, however, that the letters documenting the beneficiary's previous employment contain none of the detail necessary to determine whether the beneficiary's training and/or work experience has included the theoretical and practical application of the specialized knowledge required by a specialty occupation, that it was gained while working with individuals who hold degrees or the equivalent in the specialty occupation or that the beneficiary's expertise in the specialty has been recognized in one of the ways indicated above. The letter from the beneficiary's current employer provides a brief statement of his duties – the design, testing and documentation of programs; the evaluation of the need for modification; and the coding, debugging and formulation of solutions – and states that his experience was gained while working with individuals who hold degrees or the equivalent in the field of computer science. It does not, however, describe these duties in enough detail to determine the tasks involved in performing them. Neither is it accompanied by the independent evidence necessary to establish that the beneficiary did work with supervisors, peers or

subordinates holding degrees, or that he received any recognition of his expertise. Although the record also includes a copy of the beneficiary's resume, which does provide additional information regarding his employment history, this documentation still fails to provide the type of detail just described and, in the absence of independent evidence, does not constitute proof of the beneficiary's previous employment responsibilities.

Therefore, the beneficiary's employment experience, as documented in the record, cannot be used to augment the beneficiary's three years of academic study and provide him with the equivalent of a degree required by the proffered position, as required to satisfy the fifth and final criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D).

For reasons related in the preceding discussion, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the AAO will 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 met that burden.

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