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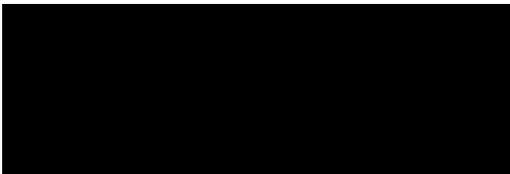
Dr

FILE: EAC 04 264 51247 Office: VERMONT SERVICE CENTER Date: APR 26 2006

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

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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

Robert P. Wiemann, Chief
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 specializes in software consulting. The petitioner seeks to employ the beneficiary as a systems analyst and to classify him 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 on the basis that the petitioner failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and previously submitted 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 denial letter; and (3) Form I-290B and accompanying brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner seeks the beneficiary's services as a systems analyst. The petitioner indicated it requires a bachelor's degree for the proposed position.

The director denied the petition based on the petitioner's failure to demonstrate that the beneficiary was qualified to perform the duties of the proposed position. The director indicated that the beneficiary's foreign diplomas and degrees were not in fields related to the proposed position. The director further found that the

beneficiary's work experience, together with his formal education in India, was not the equivalent of a U.S. degree in a directly-related field.

On appeal, the petitioner asserts that the evaluation submitted with the original petition establishes that the beneficiary holds the equivalent of a U.S. bachelor's degree in computer science.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a bachelor's degree in a computer-related field.

The beneficiary does not hold a bachelor's degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a bachelor's degree from a U.S. college or university in any field of study. 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.

On appeal, counsel submits a previously submitted evaluation from International Credentials Evaluation and Translation Services (ICETS), a company that specializes in evaluating academic credentials. The evaluator concludes that the beneficiary possesses the equivalent of a U.S. bachelor's degree in computer science. However, the evaluation is based on 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).

The ICETS evaluator states that he is a professor at “an accredited educational institution in the United States with the authority to grant college credits.” He does not, however, state that he 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. Nor does the evaluator submit evidence from the college or university to corroborate that he has this authority. 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)). On appeal, counsel asserts that the ICETS evaluator has the authority to grant credit for training and/or work experience. No independent evidence in the record of proceedings corroborates counsel’s assertion that the evaluator has authority to grant college-level credit based on an applicant’s foreign educational credentials, training, and/or employment experience. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported 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).

Consequently, CIS must determine the beneficiary’s qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). 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.

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).

Taken collectively, the beneficiary's degrees, diplomas, and transcripts do not establish equivalence to a bachelor's degree in computer science, software engineering, information technology, or a related field. The beneficiary's transcripts indicate very little study directly related to computers. His formal education can therefore be counted as no more than a general core curriculum (approximately 2 years).

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. The record contains an employment verification letter from E-Secure Services in India and the beneficiary's resume. The letter from E-Secure Services states that the company appointed the beneficiary as a software engineer on December 4, 2000. The letter does not list the beneficiary's duties and does not describe his duties in any detail. Based on the evidentiary record, the petitioner has not demonstrated that the beneficiary's training and/or work experience included the theoretical and practical application of specialized knowledge required by the software engineer position or that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in software engineering. Further, the petitioner only submitted documentation to establish recognition of expertise in the specialty occupation by one recognized authority in the same specialty occupation, not the required two. Thus the petitioner has not established that the beneficiary has recognition of expertise

Based on the evidentiary record, the petitioner has not demonstrated that the beneficiary'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; or that the beneficiary has recognition of expertise.

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.