



U.S. Citizenship
and Immigration
Services

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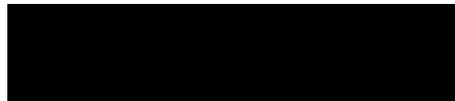
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FILE: EAC 04 150 50900 Office: VERMONT SERVICE CENTER

Date: JAN 27 2006

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:

SELF-REPRESENTED

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 consultancy and systems development firm that seeks to employ the beneficiary as an applications systems 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 previously submitted and 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 denial letter; and (3) Form I-290B and additional documents. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an applications systems analyst. The petitioner's April 12, 2004 letter indicated that a candidate must possess a baccalaureate degree, or its equivalent, in computer

science, engineering, business, math, science, technology, management information systems (MIS), computer information systems (CIS), finance, economics, or a related analytic or scientific discipline, and experience.

The director determined 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 field that is directly related to the proposed position.

On appeal, counsel states that the submitted evidence of an educational evaluation from [REDACTED] [REDACTED] associate professor of the computer science department at Pace University, reflects that the beneficiary is qualified for the proffered position based on his education and work experience.

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

The beneficiary holds a baccalaureate degree in commerce from an institution in India. The credentials evaluation from [REDACTED] states that this degree is equivalent to three years of academic study toward a bachelor of business administration degree with an emphasis in accounting from an accredited college or university in the United States. The beneficiary also holds a master's degree in commerce from Andhra University. This degree is considered by [REDACTED] to be the educational equivalent to a master's degree in business administration with a concentration in accounting from an accredited U.S. college or university.

The Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), which is a resource that CIS routinely consults, reveals that appropriate degrees for the proposed position include computer science, MIS, or information science. Thus, the beneficiary's baccalaureate and master's degrees are not in fields that are directly related to the proposed 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; 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.

To equate the beneficiary's credentials to a U.S. baccalaureate or higher degree pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), the petitioner must submit 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. The petitioner refers to the credentials evaluation from ██████████ for this purpose. The credentials evaluation from ██████████ states that the beneficiary's education, training, and work experience are the equivalent of a bachelor of science degree in the multi-disciplinary field of MIS and a master of business administration degree with a concentration in accounting from an accredited institution of higher education in the United States. In the evaluation, ██████████ refers to the beneficiary's work experience with three employers: Cybertech Systems and Software Ltd. (November 2000 to April 2001), ██████████ Consulting (May 2001 to September 2001), and Intelligroup Asia Pvt. Ltd. (September 2001 to the present). However, the record of proceeding contains employment letters from two employers, GTN Textiles Ltd. and CyberTech Systems and Software Ltd. Other than ██████████ statement that the beneficiary had been employed with Intelligroup Asia Pvt. Ltd. for over two years and with ██████████ Consulting for several months, the record contains no evidence confirming such employment. 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)). Thus, Dr. Nemes' evaluation is not persuasive in establishing the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), as the evaluation is not supported by independent evidence substantiating the beneficiary's prior employment.¹ CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

¹ The AAO notes that the record also contains a letter from the dean of the School of Computer Science and Information Systems at Pace University confirming that ██████████ has the authority to make assessments concerning the granting of college-level credit for experience in the field of computer science and related sub-disciplines. The letter also confirms that Pace University may grant college-level credit based on a candidate's foreign educational credentials, training, and/or professional employment experience.

In light of the evidence in the record, the petitioner fails to establish the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), (3), (4) or (5).

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.