

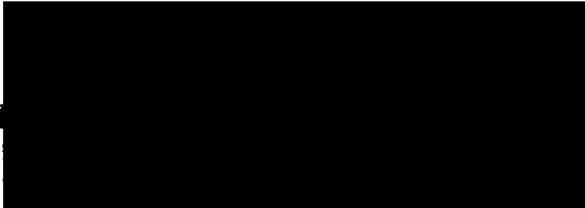


U.S. Citizenship  
and Immigration  
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FILE: EAC 04 165 50227 Office: VERMONT SERVICE CENTER Date: JAN 27 2006

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 developer 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, the petitioner submits additional and previously submitted evidence and states that the beneficiary is qualified for the proffered position.

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 additional and previously submitted evidence. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner seeks the beneficiary's services as a programmer analyst. The petitioner's May 7, 2004 letter indicated that it requires a baccalaureate degree, or its equivalent, in computer science or a related discipline.

The director determined that the beneficiary was not qualified for the proffered position because the beneficiary's education, training, and work experience is not equivalent to a baccalaureate degree in computerized information systems, which the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) indicates is generally required for a systems analyst.

To establish that the beneficiary is qualified for the proposed position, the petitioner refers to the beneficiary's baccalaureate degree in civil engineering, diploma in computer science and its accompanying mark sheet, Java 2.0 certification letter, SUN Certification, Oracle certificate, and Software Solutions Integrated Limited certificate.

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 bachelor of technology degree in civil engineering from an institution in India, which International Credentials Evaluation and Translation Services (ICETS) considers equivalent to a bachelor of science degree in engineering from an accredited institution of tertiary education in the United States. The petitioner did not submit an educational evaluation of the beneficiary's coursework at the International School of Computer Technology. The AAO is not able to determine from the record whether the beneficiary's studies at this institution involved the theoretical and practical application of a body of highly specialized knowledge, whether the education was vocational in nature, or the educational equivalency of the studies. The *Handbook* conveys that a baccalaureate degree in computer science, information systems, or a related field is appropriate for the proposed position; the beneficiary's baccalaureate degree is unrelated to these disciplines.<sup>1</sup> The petitioner must therefore 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 in computer science, information systems, or a related field 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

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<sup>1</sup> The director correctly found that the submitted mark sheet reveals that only one of the beneficiary's courses in civil engineering pertain to computer science.

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.

The petitioner submitted no evidence to establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), (2), (3), 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 occupation<sup>2</sup>;
- (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

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<sup>2</sup> *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).

- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

On appeal, the petitioner submits certificates and a diploma in the record. The certificates from Sun and the Software Solution Integrated Limited certificate do not indicate the length of training, the Oracle certificate indicated 11 days of training, and the Java 2.0 certificate reflected training from November 1998 to April 1999. Of the seven courses shown on the mark sheet from the International School of Computer Technology, the MS-DOS, C, Oracle, and MS-Windows courses pertain to computer science or a related field. The courses in MS-Word, MS-Excel, and Autocad (used for drawing) do not relate to computer science or a related discipline, however. The mark sheet does not indicate the length of studies. As indicated above, the petitioner did not submit an educational equivalency relating to this coursework. Considered collectively, the evidence in the record is insufficient to establish that the beneficiary holds the educational equivalent to a baccalaureate degree in computer science, information systems, or a related field.

The AAO now turns to consider the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. The submitted letter from Tata Consultancy Services does not indicate the beneficiary's dates of employment as a systems engineer. An August 14, 2003 letter from Megasoft Limited confirms the beneficiary's employment as a software engineer from November 20, 2000 to August 14, 2003. However, the letter does not indicate 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. There is evidence in the record that the beneficiary has recognition of expertise as the evaluator from ICETS qualifies as a "recognized authority" in the computer science field. Nevertheless, the submitted evidence of the diploma, certificates, work experience letters, and the bachelor of technology degree in civil engineering is insufficient to establish that the beneficiary holds the educational equivalent to a bachelor's degree in computer science, information systems, or a related field, which the *Handbook* indicates is required for a programmer analyst.

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.