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FILE: EAC 04 213 50686 Office: VERMONT SERVICE CENTER Date: **JUN 12 2006**

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. In order to employ the beneficiary as a systems analyst, the petitioner 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 on the basis that the petitioner had failed to establish that the beneficiary was qualified to perform services in the specialty occupation position of systems analyst. Upon review of the entire record, including all the documentation and other information submitted in the record from the filing of the Form I-129 through the appeal, the AAO finds that the director was correct. Accordingly, the appeal will be dismissed, and the petition will be denied.

As reflected in the following paragraph from his decision, the director determined that the evidence of record does not establish that the beneficiary has attained the equivalent of a U.S. bachelor's degree in the pertinent specialty:

The record indicates that the beneficiary's education appears to be entirely in the field(s) of commerce and business, with virtually no more formal training in computer science than would enable him to operate off-the-shelf software. This does not meet a professional level of competence. The beneficiary's actual employment history is much more related to the proffered position. He currently has six years' experience; at the equivalence of three years' experience to one year's college education, the beneficiary therefore has attained approximately two years toward the equivalent of a bachelor's [degree] in a directly-related field.

On appeal, counsel submits: a brief; an evaluation of the beneficiary's educational credentials and work experience; and copies of two diplomas and related academic transcripts from educational institutions in India. Counsel contends that, as expanded by the evaluation submitted on appeal, the evidence of record establishes that the beneficiary possesses a combination of education and work experience that is equivalent to "a U.S. Bachelor's Degree in Computer Information Systems and a Master of Business Administration." As discussed below, application of the pertinent statutory and regulatory standards do not support counsel's 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:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or

- (C) (i) experience in the specialty equivalent to the completion of such degree, and
- (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The degree referenced by section 214(i)(1)(B) of the Act means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position.

In implementing 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (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.

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 under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) would require 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;¹

- (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. . .

According to its express terms, to satisfy the beneficiary qualification criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), a petitioner must demonstrate three years of specialized training and/or work experience for each year of college-level training the alien lacks. This provision imposes the following evaluation standards:

[I]t must be clearly demonstrated [1] that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; [2] 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 [3] 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 occupation²;
- (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

¹ The petitioner should note that, in accordance with this provision, CIS accepts a credentials evaluation service's evaluation of *education only*, not experience.

² *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.

In this proceeding, to establish that the beneficiary is qualified to perform services in the pertinent specialty occupation of systems analyst, the petitioner must establish, by application of the above standards to the evidence of record, that the beneficiary has attained at least a U.S. bachelor's degree, or the equivalent, in computer science or a related specialty. As discussed below, the petitioner has not succeeded.

The petitioner does not possess a U.S. degree; and qualification by licensure is not an issue in this proceeding. Therefore, the issue before the AAO is whether the evidence of record establishes that the beneficiary satisfies either 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) (by a foreign degree determined to be equivalent to at least a U.S. baccalaureate degree in computer science or a related specialty), or 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) (by (1) education, specialized training, and/or progressively responsible experience that is equivalent to at least completion of a United States baccalaureate or higher degree in the specialty occupation, and (2) recognition of expertise in systems analysis through progressively responsible experiences directly related to the specialty).

The record of proceeding contains copies of the following evidence of the beneficiary's formal education in foreign colleges or universities: a three-year Bachelor of Commerce Diploma from Osmania University, India; an academic transcript reflecting a total of 14 courses over three years that led to the Osmania University degree; a Master of Business Administration diploma from Andhra University, India; an academic transcript for four semesters at Anhara University; and statements of marks on the beneficiary's examinations at Anhara Univesrity.

The record also contains copies of certificates attesting to the beneficiary's completion of computer-related programs at three institutions that the record does not establish as college-level educational institutions: Brainbench, Soft Infosys, and Software Solution Integrated Limited (SSIL).

Documentation of the beneficiary's work experience consists of two NCS Difference Quality Awards; a job offer letter and memorandum of terms of employment for the beneficiary to serve as a Senior Systems Analyst [REDACTED] and a letter from each of the following former employers: EPS [REDACTED] (attesting that the beneficiary was employed as a Senior Analyst Programmer); [REDACTED] (attesting that the beneficiary was employed as a Software Engineer); and SSI Limited (attesting that the beneficiary was employed as a Software Engineer).

The record of proceeding contains two evaluations of the beneficiary's foreign education and work experience. The first, submitted prior to the director's decision, was rendered by a professor working as a consultant for an entity identified in the evaluation as ICETS; the second, submitted with the appeal, was rendered by an evaluator employed by Education Evaluation and Immigration Service (EEIS). It is noted that the two evaluations are materially different in their findings and ultimate conclusions.

The AAO accords no weight to either evaluation's conclusions as to the educational equivalency of the beneficiary's work experience or Brainbench, Soft Infosys, and SSIL training courses, as the record establishes neither evaluator as "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" as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(2). Consequently, the AAO considered the EEIS and ICETS evaluations only to the extent that they commented upon the U.S. degree equivalency of the beneficiary's coursework at Osmania University and Anhara University.

Without explanation or independent evidence to validate its accuracy, the EEIS evaluation submitted on appeal contradicts the earlier evaluation rendered by the consultant for ICETS. The earlier evaluation determined that the courses completed at Osmania University and at Anhara University are equivalent, respectively, to three years of coursework towards an accredited U.S. bachelor's degree in business administration (BBA), and to completion of coursework required for an accredited U.S. BBA. In contrast, the EEIS evaluation – which counsel would have the AAO adopt – opined that the Osmania University coursework is equivalent to an accredited U.S. BBA with a concentration in accounting, and that the Anhara University coursework is equivalent to a Master of Business Administration Degree.

The AAO discounts the evaluations to the extent that they contradict each other. Consequently, the AAO finds that they establish that the beneficiary's foreign coursework associated with his two degrees is the equivalent of a U.S. bachelor's degree in business administration. However, as the beneficiary's academic transcripts for his foreign degrees do not reveal coursework in computer science or a related discipline, the AAO finds that the beneficiary has not attained the requisite U.S. degree equivalency in the specialty required for systems analysts. 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. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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).

The training certificates and the content of the documents submitted from former employers do not provide sufficient information for the AAO to make a determination under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) that, by application of this provision's three-for-one rule, the beneficiary has attained sufficient years of specialized training and work experience to equate to the college coursework in computer science or a related discipline that he is missing. The training certificates do not establish that the beneficiary's computer training equates to U.S. college-level credits. The training certificates and the documents from the beneficiary's former employers do not merit CIS recognition as equivalent to accredited U.S. college or university credits under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), as they do not clearly demonstrate (1) that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; (2) 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 (3) that the alien has

recognition of expertise in the specialty evidenced by at least one type of documentation specified in this provision.

The record provides no basis for disturbing the director's decision. The petitioner failed to establish that the beneficiary is qualified to perform services in a specialty occupation according to the standards of 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

As always, the burden of proving eligibility for the benefit sought remains entirely 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.