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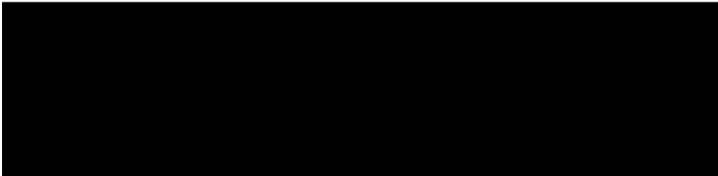


FILE: LIN 04 253 53036 Office: NEBRASKA SERVICE CENTER Date: JUN 02 2006

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.

for Michael T. Kelly
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 sustained. The petition will be approved.

The petitioner is a software development and consulting company that seeks to employ the beneficiary as a programmer 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 because the beneficiary is not qualified to perform the duties of a specialty occupation. The director stated that it was not clear what documents the evaluator relied upon in making her determination that the beneficiary has the equivalent of a bachelor's degree in computer science. On appeal, counsel files a brief.

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 (RFE); (3) the petitioner's response to the director's request;

(4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a programmer analyst. Although not explicitly stated, the petitioner indicated in its response to the director's request for evidence and by supporting documents submitted at that time that it wished to hire the beneficiary because he possessed education, training and work experience in computer science.

The director found 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 specialty required by the occupation. On appeal, counsel states that the beneficiary is qualified for the position and that the director disregarded the expert opinion letter submitted to support this claim.

Upon review of the record, the petitioner has established that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in computer science. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, although he does hold a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in mechanical engineering. Since this specialty is not directly related to the proffered position, 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 provides an additional letter from the evaluator stating how she arrived at her determination that the beneficiary's education and work experience are equivalent to a bachelor's degree in computer science. Counsel states that many of the courses taken by the beneficiary in pursuing his degree in mechanical engineering are applicable to a degree in computer science. The petitioner's response to the director's request for evidence included an evaluation from the International Educational Equivalency Evaluation Services, a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary possesses the equivalent of a bachelor's degree in mechanical engineering from an accredited U.S. college or university. The evaluator stated that the diploma and classes in computer programming, database management, and completed certifications as a technical consultant in SAP do not represent completion of the equivalent of formal academic study in computer science, "but do demonstrate acquisition of a skill set highly valued by employers." The petitioner also provided an evaluation from the Dean of Studies at Saint Vincent College, as well as a letter from the registrar at Saint Vincent College stating that the Dean of Studies is the individual with authority to grant academic credit for work experience. St. Vincent College has a program for granting credit based on training or work experience. The Dean stated that the beneficiary's education and work experience were equivalent to a bachelor's degree in computer science.

The director determined that the employment affidavits that had been submitted with the petition were insufficiently detailed and that "the petitioner failed to submit detailed employment affidavits that clearly document his specific duties." As a result, the director found that it was "unclear how the evaluator determined that the beneficiary completed work experience that can be considered equivalent to bachelor's-level training." On appeal, counsel provides an additional letter from the evaluator stating that she relied on employment letters from three of the beneficiary's previous employers in determining that the duties performed by the beneficiary, combined with his foreign degree, were the equivalent of a bachelor's degree in computer science. Included with the appeal were the three letters. The AAO finds that the petitioner has overcome the basis for the director's denial of the petition. The petitioner has, thus, overcome the director's determination that the beneficiary was not qualified to perform the duties of the specialty occupation.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.