

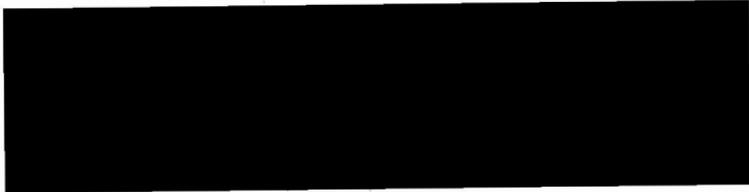


U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

D2

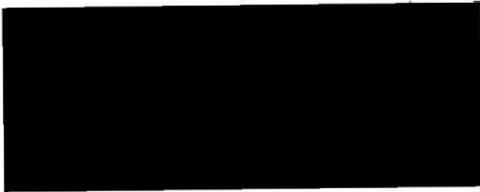


FILE: EAC 04 262 52742 Office: VERMONT SERVICE CENTER Date: OCT 05 2006

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The petitioner filed an appeal, which was initially rejected because the Form I-290B was not signed by an individual identified in the petition or in the Form G-28 as an affected party. The petitioner has remedied this defect and the matter is now on appeal before the Administrative Appeals Office (AAO). The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The petitioner is an information technology consulting and development company. It seeks to employ the beneficiary as a programmer analyst and to classify her 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 ground that the record failed to establish that the beneficiary is qualified to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), provides that an alien must have the following credentials to be qualified to perform the services of a specialty occupation:

- (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.

As further explained in 8 C.F.R. § 214.2(h)(4)(iii)(C), an alien must meet one of the following criteria to qualify to perform the services of 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.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's decision; and (3) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as an IT company that provides a variety of computer related services. In addition to developing in-house computer software and marketing it to clients, the petitioner indicates that it provides consultancy services with respect to its clients' computer and information requirements, creating original software programs, developing software applications, training personnel, implementing hardware, and updating existing programs and systems. The petitioner states that its business was established in 2001, earned gross revenues of \$1.75 million in 2003, and had 30 employees at the time the instant petition was filed. To keep pace with its growing business the petitioner proposes to employ the beneficiary as a programmer analyst for three years at an annual salary of \$45,000. The duties of the proffered position are described as follows in a letter accompanying the petition:

Analyze the existing programs and systems; design and develop programs and systems; administer software installations, tune performance and monitor system resources; test, repair and modify software programs to ensure their technical accuracy.

[The beneficiary] will be well versed in highly technical and advanced languages and programs, including SAS, SPSS, MINITAB, MS-Access, SQL Server, Oracle Financials, C, Adobe Photoshop, Java, Corel Draw, HTML, XML on platforms such as Windows 2000/NT/XP, and Unix. [She] will analyze statistical data, compile the information and assimilate programs using statistical software such as SAS, SPSS, and MINITAB.

The minimum requirement for the job, the petitioner declares, is a baccalaureate degree in engineering or its equivalent in professional experience. According to the petitioner, the beneficiary is qualified for the position by virtue of her master of arts in communication studies from Bowling Green University in Ohio, awarded in 2004, her bachelor of commerce degree in management from Mumbai University in India, awarded in 1998, and a diploma in computer graphics and animation from ICAD in India, together with her work experience in the computer industry.

In his decision the director determined that the courses the beneficiary took in earning her master's degree in communication studies were not directly related to, or adequate preparation for, a programmer analyst position. The director also determined that the beneficiary's two degrees – a master's degree in communication studies and a bachelor's degree in commerce – are not equivalent to a bachelor's degree in engineering or computer programming. As for the beneficiary's diploma in computer graphics and animation, the director noted that no evidence had been submitted of such a diploma or its U.S. degree equivalency. Nor

did the petitioner show, in the director's judgement, that the beneficiary's work experience was directly related to the proffered position of a programmer analyst. The director concluded that the record failed to establish that the beneficiary's education and experience qualifies her to work as a programmer analyst.

On appeal the petitioner submits a more detailed description of the proffered position. As explained by the petitioner, the beneficiary would report to a team leader, interact with software engineers, technical writers, testers, and other programmer analysts, and perform the following specific duties:

- Analyze statistical data, compile information and assimilate programs using statistical software.
- Translate complex problem requirements into simple and effective process instructions.
- Create, maintain and control instruction manuals, inspection and test documents, service bulletins, and customer, systems, and testing instruction sheets.
- Incorporate appropriate change order information or information initiated from other feedback, both internal and external, into documents.
- Ensure timely updates for all internal copies of documents that are used for reference in engineering, marketing, systems, testing, and integration.
- Manage and maintain documents according to internal guidelines and modify such guidelines as required.
- Participate in the development and introduction of new methodologies and procedures.
- Other related tasks as required.

The petitioner submits two additional letters discussing the beneficiary's employment experience and educational qualifications. According to the petitioner, the programmer analyst position has two major components – technical writing as well as statistical analysis and programming – which the beneficiary is qualified to perform based on her educational coursework and employment experience.

CIS routinely consults the *DOL Handbook* as an authoritative source about the duties and educational requirements of particular occupations. As discussed in the *Handbook*, 2006-07 edition, at 105 and 116, programmer-analysts combine the duties of computer programming and systems analysis. With respect to the educational requirements of the occupation the *Handbook* states the following about computer programmers:

Bachelor's degrees are commonly required, although some programmers may qualify for certain jobs with two-year degrees or certificates. The associate degree is a widely used entry-level credential for prospective computer programmers. Most community colleges and many independent technical institutes and proprietary schools offer an associate degree in computer science or a related information technology field.

[I]n the absence of a degree, substantial specialized experience or expertise may be needed. Even when hiring programmers with a degree, employers appear to place more emphasis on previous experience.

Some computer programmers hold a college degree in computer science, mathematics, or information systems, whereas others have taken special courses in computer programming to supplement their degree in a field such as accounting inventory control, or another area of business . . . . As indicated by the following tabulation, more than two-thirds of computer programmers had a bachelor's or higher degree in 2004:

High school graduate or less – 8.3%; Some college, no degree – 14.1%; Associate degree – 10.2%; Bachelor’s degree – 49.1%; Graduate degree – 18.3%.

*Id.* at 105-06. With regard to the educational requirements of computer systems analysts, the *Handbook* states the following:

[W]hile there is no universally accepted way to prepare for a job as a systems analyst, most employers place a premium on some formal college education. Relevant work experience also is very important. For more technically complex jobs, persons with graduate degrees are preferred.

Many employers seek applicants who have at least a bachelor’s degree in computer science, information science, or management information systems (MIS) . . . . Employers are increasingly seeking individuals with a master’s degree in business administration (MBA), with a concentration in information systems, as more firms move their business to the Internet.

Despite employers’ preference for those with technical degrees, persons with degrees in a variety of majors find employment as system analysts. The level of education and type of training that employers required depend on their needs . . . .

Thus, the *Handbook* indicates that a range of degrees is suitable for entry into computer programming, systems analyst, and programmer/analyst positions, that associate degrees and vocational training certificates suffice for some positions, and that some employers view relevant work experience in the computer field as the most important attribute of job applicants, which can substitute for the lack of any degree.

As previously discussed, the beneficiary has a master’s degree in communication studies from Bowling Green State University in Ohio. The documentation of record, which includes the beneficiary’s academic transcript and letters from several of her professors, indicates that the beneficiary’s coursework and related activities at Bowling Green involved extensive and advanced use of computers. For example, at least two of the beneficiary’s courses – “Building Cyberfeminism & Web” and “Performing Digitally Mediated Identities” – clearly incorporated sophisticated computer applications into the curriculum. As explained in a letter from an associate professor of communications, for whom the beneficiary performed research as a master’s advisee:

[The beneficiary was] enrolled in my course on Research Methods and in my summer graduate course on Performing Digitally Mediated Identities. For this latter course, she worked with interactive synchronous multi-user, object oriented open source software and digital video production. She also did an independent study regarding digital media and culture. Thus, while she was being trained as a researcher, [the beneficiary] was also acquiring hands-on technical web-production and multimedia skills.

The professor went on to state that the beneficiary “has an applied and theoretical understanding of statistics and several kinds of database software used in quantitative research methods.” Another letter in the record is from the Chair of Bowling Green’s Department of Telecommunications, who states that the beneficiary worked as his

teaching assistant (TA) during the 2003-04 school year in his international telecommunications courses, performing the following duties:

[The beneficiary] used statistical programs such as Excel and other statistical tools to manage the data generated from the class. She also gave evaluative information from those data which helped in student advisement. She was comfortable with computer based teaching and used computer technology in other aspects of on-line administration of the course.

Thus, the record shows that the beneficiary's master's degree program at Bowling Green State University included a range of activities – including coursework, research, and teaching assistant duties – that involved broad applications of computer technology. The AAO determines that the beneficiary's master of arts degree in the field of communication studies from an accredited U.S. university qualifies her to perform the services of the proffered position.

The AAO notes, however, that the director did not analyze the question of whether the proffered position meets the statutory and regulatory criteria of a specialty occupation. The petitioner indicates that the beneficiary would provide services to a client company at a location different from the petitioner's, but has neither identified the client nor provided an inventory of employment from the client (or clients, if more than one is involved) which describes the specific tasks the beneficiary would perform during the period of requested H-1B classification.

The AAO concludes that this matter must be remanded for a determination by the director as to whether the proffered position qualifies as a specialty occupation. The director may afford the petitioner reasonable time to provide evidence pertinent to that issue, as well as any other evidence the director may deem necessary. The director shall then issue a new decision based on the evidence of record with respect to whether the programmer analyst position is a specialty occupation. As always, the burden of proof rests with the petitioner. See section 291 of the Act 8 U.S.C. § 1361.

**ORDER:** The director's decision of October 4, 2004 is withdrawn. The petition is remanded to the director for entry of a new decision. If adverse to the petitioner, the decision shall be certified to the AAO for review.