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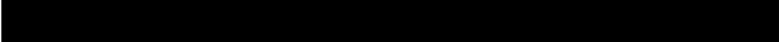
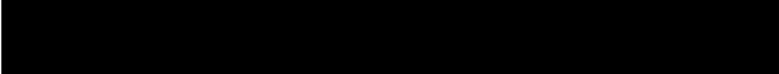
**U.S. Citizenship
and Immigration
Services**

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FILE: SRC 05 209 50992 Office: TEXAS SERVICE CENTER Date: **NOV 14 2007**

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, Chief
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was approved by the service center director. Based upon information obtained from the beneficiary during his visa issuance process at the U.S. Consulate, [REDACTED] the director determined that the beneficiary was not clearly eligible for the benefit sought. Accordingly, the director properly served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the visa petition and her reasons therefore, and ultimately revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be revoked.

The petitioner is a software development and consulting business¹ 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 determined that the petitioner had not responded to the NOIR and thus had not established that the beneficiary is qualified to perform a specialty occupation.

On appeal, the petitioner's president submits additional documentation and states: "We have sent the response to the RFE to DHS on 06/08/2006 by Fed-ex [sic] to deliver the package to DHS by 06/09/2006, which would make the case reach the DHS ontime [sic]. But because of various reasons, Fedex [sic] was unable to deliver the package until 06/13/2006...."

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;

¹ An October 12, 2007 review of the Ohio Secretary of State website at <http://www1.sos.state.oh.us/pls/portal> finds the petitioner's current status reported as "hold" as of February 2, 2007, as the petitioner had "failed to file necessary corporate franchise tax reports or pay any such taxes within the time prescribed by law." Thus the petitioner's status as a U.S. employer has not been established.

- (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) the Form I-129 and supporting documentation; (2) the director's approval letter; (3) the director's Notice of Intent to Revoke (NOIR); (4) the petitioner's response to the director's NOIR; (5) the director's revocation letter; and (6) the 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. The petitioner indicated that the beneficiary is a qualified candidate for the job because he possesses a foreign Bachelor of Commerce degree, a foreign Post Graduation Advance Diploma in Computer Applications, post-graduate diplomas in communication and management, and related employment.

In the NOIR, the director indicated that the beneficiary was not qualified for the proffered position because during the visa interview at the U.S. consulate, the beneficiary presented only his bachelor's degree in commerce, which reflected no coursework related to the proffered programmer analyst position. The director also indicated that the foreign training institutions that issued the beneficiary's post-graduate diplomas, which are, in part, the basis of the evaluator's conclusion that the beneficiary holds the U.S. equivalent of a bachelor's degree in computer information systems, are private learning centers not accredited by the government. The director indicated further that the beneficiary could not produce any evidence of professional employment experience related to the proffered position, and was unable to describe the work projects that appeared on his resume or demonstrate any specialized knowledge related to a programmer analyst position.

In a response to the NOIR, the petitioner's president asserted that the beneficiary is qualified for the proffered position, as he had been thoroughly evaluated by the petitioner and the credentials evaluation service IndoUS Technology & Educational Service, Inc. (ITES, Inc.). The petitioner's president submitted the beneficiary's original work certificates as verification of the authenticity of the previously submitted documentation.

The record contains the following pertaining to the beneficiary's qualifications:

- Documentation related to the Indian business "Intelligroup Asia Private Limited," including: a job offer; a performance review; salary structures; a bonus; "Salary Slips" issued to the beneficiary in the capacity of "consultant" in the SAP Support Department, dated January through April 2006; and certificates from representatives of the said business, certifying that the beneficiary has been employed in the capacity of MM Consultant/Consultant since June 1, 2004;

- Documentation related to the Indian business “Reliance Global Services Pvt. Ltd.,” including: an appointment as “Associate Consultant”, a certification that the beneficiary was deputed to Intelligroup Asia Ltd. from January through May 2004 as “Associate SAP – MM Consultant,” and the beneficiary’s resignation from the said business on May 31, 2004;
- Documentation related to the Indian business “Indosoft International Ltd.,” including: an employment offer for the position of “DBA – SQL Server,” and a letter from the business’s vice president of corporate operations certifying that the beneficiary worked for the said business from January 3, 2001 through December 31, 2001;
- Documentation related to the Indian business “Kirby Building Systems India Ltd.,” including: a testimonial from the human resources and company secretary indicating that the beneficiary worked as a purchase executive for the said business during 1999-2000; an appointment letter and salary schedule; and a letter of separation from the said business, dated December 22, 2000;
- Documentation related to the Indian business “BPL Engineering Limited,” including: a certificate indicating that the beneficiary worked as a purchase assistant/purchase officer at the said business from July 25, 1995 through August 16, 1999; an appointment letter and salary schedule; and a separation letter;
- Documentation related to the Indian business “R.C.C. (Sales) Private Limited,” including: a service certificate reflecting that the beneficiary worked at the said business as an assistant purchase officer from January 5, 1994 through July 22, 1995, and related paperwork;
- Documentation related to the Indian business “Sahney Paris-Phone Limited,” reflecting that the beneficiary worked as a graduate trainee/purchase assistant from November 30, 1989 through December 30, 1993, and related paperwork;
- A Bachelor of Commerce degree issued to the beneficiary on February 2, 1998, by the Indian institution, Nagarjuna University, and corresponding transcripts and grades;
- A certificate issued to the beneficiary by C-Point Computer Education on May 26, 2001, and corresponding transcripts, for the completion of the course “Post Graduation Advance Diploma in Computer Applications” conducted from June 1999 through April 2001;
- A provisional certificate issued to the beneficiary by Bhavan’s College of Communication & Management on July 15, 1999, and corresponding transcript, for the completion of the one-year, post-graduate diploma course “M-2: Business Management” held in April 1999;
- A provisional certificate issued to the beneficiary by Bhavan’s College of Communication & Management on July 31, 1996, and corresponding transcript, for the completion of the one-year, post-graduate diploma course “MS - International Trade” held in April 1996;

- A provisional certificate issued to the beneficiary by Bhavan's College of Communication & Management on September 1, 1995, and corresponding transcript, for the completion of the one-year, post-graduate diploma course "M-6: Materials Management" held in April 1995;
- Printouts of internet information indicating that Bhavan's College is accredited by the National Assessment and Accreditation Council (NAAC);
- Documentation related to the beneficiary's completion of high school in 1985; and
- A credentials evaluation from ITES, Inc., dated July 12, 1995, concluding that, "[b]ased on the reputation of Nagarjuna University, C-Point Computer Education, Bhavan's College of Communication & Management, [and] the duration and nature of academic coursework," the beneficiary holds the equivalent of a bachelor's degree in computer information systems from an accredited college or university in the United States.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in a computer-related field. The beneficiary holds a foreign Bachelor of Commerce degree, a foreign Post Graduation Advance Diploma in Computer Applications, post-graduate diplomas in coursework related to business and materials management, and related employment. The beneficiary, however, does not hold a baccalaureate degree from an accredited U.S. college or university in a computer-related field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in a computer-related field of study. Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

When determining a beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the AAO relies upon the five criteria specified at 8 C.F.R. § 214.2(h)(4)(iii)(D). A beneficiary who does not have a degree in the specific specialty may still qualify for an H-1B nonimmigrant visa based on:

- (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.

The credentials evaluation listed above is based in part on the beneficiary's foreign bachelor's degree in commerce. The evaluator from ITES, Inc., [REDACTED] concludes that the beneficiary holds the equivalent of a bachelor's degree in computer information systems from an accredited college or university in the United States based on his foreign bachelor's degree in commerce, computer-related training, and communication and business coursework. Although [REDACTED] who is a professor in the Computer Information Systems Department, at Raritan Valley Community College in New Jersey, asserts that he has authority to grant college-level credit for training and/or work experience, the record contains no corroborating evidence in support of his assertion. 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)). Furthermore, the record contains no evidence that Raritan Valley Community College has a program for granting credit based on training or experience, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).² Thus, the evaluation carries no weight in these proceedings. 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).

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 occupation³;

² A review of this institution's website at <http://www.raritanval.edu/> does not reflect that Raritan Valley Community College has a program for granting credit based on training or experience, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).

³ *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

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

The record contains an employment letter, indicating that the beneficiary has computer-related work experience. The record also contains diplomas and other evidence of computer-related training. The record, however, contains insufficient evidence that this documentation is equivalent to a baccalaureate degree in a computer-related field.

Upon review, the record does not contain evidence that the beneficiary's prior work experience included the theoretical and practical application of specialized knowledge required by the specialty. The record does not contain evidence that the beneficiary's duties for his prior employers involve the theoretical and practical application of a programmer analyst. The employment letters do not contain a description of the beneficiary's duties and thus do not demonstrate that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge related to programming analysis. Further, the foreign employers do 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. The record also contains no evidence of the recognition of expertise required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Likewise, the training diplomas/certificates submitted are insufficient to establish that the beneficiary's computer-related training is comparable to academic courses taken at a four-year university that are a realistic prerequisite to attaining a bachelor's degree in a specific specialty in computer science or a related field. The record does not contain sufficient information regarding the computer training to evaluate the training as more than vocational coursework that results in technical skill but does not include the theoretical knowledge attained through a bachelor's level course of study at an accredited university in the United States.

In short, 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 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 revocation of the petition.

Beyond the decision of the director, the petitioner has provided no contracts, work orders or statements of work describing the duties the beneficiary would perform for its client, [REDACTED] located in Ridgeville, South Carolina, and thus has also failed to establish that the proffered position is a specialty occupation. The court in *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000) held that for the purpose of determining whether a proffered position is a specialty occupation, the petitioner acting as an employment contractor is merely a "token employer," while the entity for which the services are to be performed is the "more relevant employer." The *Defensor* court recognized that evidence of the client companies' job requirements is critical where the work is to be performed for entities other than the petitioner. The court held that the legacy Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. As the record does not contain any documentation that establishes the specific duties the beneficiary would perform under contract for the petitioner's client, [REDACTED], the AAO cannot analyze whether these duties would require at least a baccalaureate degree or the equivalent in a specific specialty, as required for classification as a specialty occupation. Accordingly, the petitioner has not established that the proposed position qualifies as a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(A) or that the beneficiary would be coming temporarily to the United States to perform the duties of a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(1)(B)(1). For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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 revoked.