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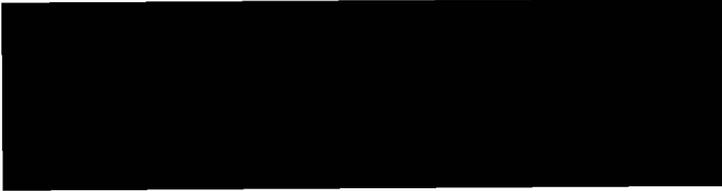
U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: EAC 07 156 50384 Office: VERMONT SERVICE CENTER Date: OCT 28 2008

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, Chief
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 The director's decision will be withdrawn. The petition will be remanded.

The petitioner is a provider of computer systems integration and software development for commercial applications. It 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, determining that the petitioner had not established that the beneficiary is qualified to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief and documentation in support of the appeal. The AAO reviewed the record in its entirety before reaching its decision.

The director found that the petitioner had not demonstrated that the beneficiary was qualified for the proffered position, as the petitioner had not submitted the requested evaluation of the beneficiary's training and/or work experience and the beneficiary's academic credentials do not show any coursework related to computer programming. On appeal, counsel asserts that the petition should have been approved because the beneficiary's credentials evaluation and resume clearly prove that he has the necessary combination of education and experience to perform the job of a programmer analyst. Counsel also states that the beneficiary's foreign Bachelor of Science degree and prior work experience as a programmer analyst qualify him for the proffered position. As supporting documentation, counsel submits a new credentials evaluation based on the beneficiary's academic qualifications and professional experience from [REDACTED] of the University of Phoenix.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Moreover, even if the AAO were to accept the new credentials evaluation based on the beneficiary's academic qualifications and professional experience as timely, the submission would still be deficient because although [REDACTED], the evaluator from the University of Phoenix, concludes that the beneficiary holds the U.S. equivalent of a Bachelor of Science in Computer Information Systems, he has not established his competency to render an evaluation on experience. For educational-equivalency evaluations of experience, CIS recognizes as competent only such officials as specified at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). He does not state or establish that he has the authority to grant college-level credit for experience in a computer-related specialty at an accredited college or university which has a program for granting such credit based on a person's training or work experience. He states that he has the authority to grant college-level credit for training, and/or courses taken at other U.S. or international universities. Moreover, the record contains no corroborating evidence of such credit-granting authority, such as a letter from the university dean or provost. For these reasons, the evaluator's conclusion regarding the equivalency of the beneficiary's academic qualifications, training, and

professional experience 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 other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). In view of the foregoing, the appeal will be adjudicated based on the record of proceeding before the director.

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

- A credentials evaluation, dated May 25, 2006, concluding that the beneficiary's foreign Bachelor of Technology degree is the equivalent of Bachelor of Science Degree in Engineering from an accredited institution of higher education in the United States;
- Copies of the beneficiary's Bachelor of Technology in Mechanical Engineering degree conferred by the Indian Institute of Technology Kanpur on May 28, 2004, and transcripts;
- A Character Certificate, dated May 28, 2004, from the assistant registrar of the Indian Institute of Technology Kanpur, certifying that the beneficiary successfully completed the requirements for a Bachelor of Technology (B.Tech.) degree in Mechanical Engineering in May 2004;
- Documents relating to the beneficiary's secondary education; and
- A description of the beneficiary's employment experience in the petitioner's May 16, 2007 letter.

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 AAO observes that the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that there are many training paths available for programmers and that although bachelor's degrees are commonly required, certain jobs may require only a two-year degree or certificate. The *Handbook* also reports that there is no universally accepted way to prepare for a job as a systems analyst, although most employers place a premium on some formal college education. For jobs in a technical or scientific environment, employers often seek applicants with at least a bachelor's degree in a technical field, such as computer science, information science, applied mathematics, engineering, or the physical sciences. In this matter, the beneficiary holds the equivalent of Bachelor of Science Degree in Engineering from an accredited institution of higher education in the United States. Therefore, the petitioner has provided evidence that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). **The petitioner thus has overcome the director's objection.**

The petition may not be approved, however, because the director has not determined whether the proffered position is a specialty occupation. In this case, the petitioner indicates that the beneficiary will work in-house. The petitioner, however, describes the proposed duties only generically and does not specify any specific in-house projects to which the beneficiary would be assigned, and the record contains no evidence of any such projects. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act. 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)).). The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the proffered position is a specialty occupation, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record at it relates to the regulatory requirements for eligibility. 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.

ORDER: The director's May 21, 2007 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.