

U.S. Department of Homeland Security  
20 Massachusetts Ave., NW, Rm. 3000  
Washington, DC 20539-2090  
MAIL STOP 2090



U.S. Citizenship  
and Immigration  
Services

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

D2

FILE: EAC 06 180 53510 Office: VERMONT SERVICE CENTER Date: MAR 04 2009

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: 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont 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 information technology (IT) consulting firm 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 based on the finding that the beneficiary is not qualified to perform the duties of a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Act.

On appeal, the petitioner asserts that the beneficiary possesses the U.S. equivalent to a baccalaureate degree in computer information systems and provides a second credentials evaluation for the beneficiary.

Section 214(i)(2) of the Immigration and Nationality Act (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; (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. The petitioner indicated in an undated letter that it wished to hire the beneficiary because the beneficiary is an IT professional with five years of IT experience and a computer-related training certificate. Although not expressly stated, it appears that the petitioner requires a baccalaureate degree or its equivalent in a computer-related field for the proffered position.

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, the petitioner disputes the director's conclusion, focusing heavily on the report of an independent evaluator, who scrutinized the beneficiary's foreign educational credentials and work experience and ultimately found that the beneficiary is qualified for the position because she has the U.S. equivalency to a baccalaureate degree in computer information systems. Specifically, the independent evaluator discussed the beneficiary's one year of coursework with the National Institute of Information Technology (NIIT) in India and her subsequent five years of employment as a software engineer.

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 does not hold a baccalaureate degree from an accredited U.S. college or university in any 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).

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.

In the present matter, the petitioner submitted a credential evaluation from International Credential Evaluators, Inc. in response to the request for additional evidence issued on September 21, 2006. The evaluator found that the beneficiary's one year of computer course work with the NIIT is equivalent to one year of post-secondary education in computer programming from an accredited university in the United States. The evaluator also considered the beneficiary's work experience, the beneficiary's Bachelor of Arts and Master of Arts degrees obtained abroad and found that [REDACTED] [REDACTED] has a full equivalent of a Bachelor of Science in geography with course work in computer programming. The AAO notes, however, that the beneficiary in the present matter is [REDACTED] not [REDACTED]. Therefore, the evaluation issued by International Credential Evaluators, Inc. is irrelevant in the present matter.

Moreover, even if the above evaluation named the beneficiary as the subject of the evaluation, it would nevertheless be inadequate, as it is based upon the beneficiary's education, training, and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

On appeal, counsel submits an additional evaluation, this time from [REDACTED] from the Department of Statistics and Computer Information Systems, Baruch College. The evaluator determined that the beneficiary has work experience and training in positions of progressively increasing responsibility and sophistication and concluded that based on the ratio of three years of work experience for one year of college training, the beneficiary has the equivalent of at least one year of college-level training in computer information systems. However, similar to the above evaluation, this evaluation is also based upon the beneficiary's education, training, and work experience. *See id.* Thus, as the evaluation is primarily based on the beneficiary's work experience, it carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

Additionally, 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) requires that an evaluating official have the authority to grant college credits under the circumstances specified therein. In the present matter, the letter from Baruch College, dated August 2, 2004, merely indicates that [REDACTED] is qualified to assess students' educational credentials from other universities and from other nations. There is no indication, however, that [REDACTED] is authorized to actually grant college-level credit for training and/or experience in the specialty.

Lastly, when U.S. Citizenship and Immigration Services (USCIS) 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. In the present matter, even if [REDACTED] were authorized to grant college credits, his evaluation of the

beneficiary's credentials and work experience indicates that the beneficiary has less than two years of college-level training required in the attainment of a baccalaureate degree in computer information systems. As such, even if USCIS were to come to the same conclusion as [REDACTED] it would not find that the beneficiary possessed the equivalent of a degree in the required specialty based on less than two years of college-level training in that specialty, even when combined with the beneficiary's other post-secondary education. Regardless, given that the petitioner has failed to submit evidence of the beneficiary's recognition of expertise in the specialty, it is not possible for USCIS to make a favorable determination of a degree equivalency under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Therefore, the beneficiary's work experience does not amount to the requisite baccalaureate degree that is necessary for USCIS to find the beneficiary qualified to perform the duties of a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Act.

The AAO now turns to counsel's assertion that this petition must be approved because the service center director recently approved an extension of the beneficiary's H-1B status that was based upon a second petition that the petitioner filed with the California Service Center. As stated previously, the evidence in the record does not support a finding that the beneficiary is qualified for the proffered position. The service center director's decision to approve another petition has no bearing on the AAO's decision in this matter, as service center directors' decisions are not binding on this office. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). The AAO does note, however, that if the facts in the record relating to the second petition were similar to the facts in this record, the service center director's approval of the petition would constitute gross error. The AAO is not required to approve a petition where eligibility has not been demonstrated, merely because of another approval that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988).

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 denied.