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FILE: EAC 06 161 54320 Office: VERMONT SERVICE CENTER Date: SEP 21 2009

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

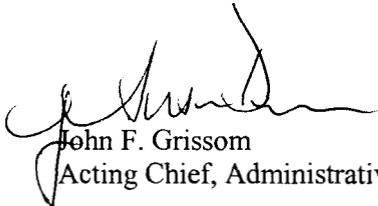
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:
[Redacted]

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director initially approved the nonimmigrant visa petition. However, upon receipt of correspondence from the United States Consulate in Chennai, the director issued a notice of intent to revoke, and ultimately revoked, approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition's approval will be revoked.

The petitioner is a software engineering and IT consulting company 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 revoked the petition's approval on the basis of his determination that the petitioner had failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation, received at the service center on May 2, 2006; (2) the director's approval of the petition, dated July 15, 2006; (3) the December 8, 2006 consular return; (4) the director's June 13, 2007 notice of intent to revoke (NOIR) approval of the petition; (5) the petitioner's response to the director's NOIR, received at the service center on July 13, 2007; (6) the director's August 31, 2007 revocation of the petition's approval; and (7) the Form I-290B and supporting documentation, received at the service center on October 1, 2007. The AAO reviewed the record in its entirety before issuing its decision.

After the director approved the petition on July 15, 2006, the beneficiary appeared at the United States Consulate in Chennai, India. On December 8, 2006, the consulate returned the file to the director after having determined that the beneficiary is not qualified to perform the duties of the proposed position. In its notice, the consulate stated that the beneficiary's academic transcripts indicated that the beneficiary had taken no coursework related to the proposed position. With regard to the beneficiary's work experience, the consulate stated the following:

[The beneficiary] stated during his interview that he had been an IT manager during some of his previous jobs, and had worked for a time as an IT trainer, but acknowledged that he has never actually done any professional programming himself. While his professional experience is extensive and impressive, none of his work experience is directly relevant to the job of a programmer/analyst.

At the time it filed the petition, the petitioner submitted an evaluation of the beneficiary's academic and professional qualifications prepared by [REDACTED] on April 4, 2006. The petitioner also submitted this evaluation in response to the director's NOIR, as well as on appeal. [REDACTED] found the beneficiary's education equivalent to a master's degree in business administration. He found the beneficiary's combination of education and work experience equivalent to a bachelor's degree in computer information systems.

The director found the petitioner's assertions in response to the NOIR unconvincing, and revoked approval of the petition on August 31, 2007. On appeal, counsel contends that the director revoked approval of the petition in error, and reiterates her earlier assertions that the beneficiary is qualified to perform the duties of the proposed position.

The Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), a resource upon which the AAO routinely relies for its information about the duties and educational requirements of particular occupations, discusses the qualifications necessary for employment as a programmer analyst within its entries for computer systems analysts and computer programmers. In its entry for computer systems analysts, the *Handbook* states the following:

For jobs in a business environment, employers often seek applicants with at least a bachelor's degree in a business-related field such as management information systems (MIS). Increasingly, employers are seeking individuals who have a master's degree in business administration (MBA) with a concentration in information systems.¹

In its entry for computer programmers, the *Handbook* states the following:

Employers who use computers for business applications prefer to hire people who have had college courses in management information systems and business, and who possess strong programming skills. A graduate degree in a related field is required for some jobs.²

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

¹ See <http://www.bls.gov/oco/ocos287.htm> (accessed September 4, 2009).

² See <http://www.bls.gov/oco/ocos110.htm> (accessed September 4, 2009).

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 first criterion requires a demonstration that the beneficiary earned a baccalaureate or higher degree from a United States institution of higher education. The beneficiary did not earn a degree in the United States, so he does not qualify under this criterion.

Nor does the beneficiary qualify under the second criterion, which requires a demonstration that the beneficiary's foreign degree has been determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university. Although [REDACTED] found the beneficiary's education equivalent to a master's degree in business administration, he did not indicate that it included a concentration in information systems, which the *Handbook* indicates is necessary in order for such a degree to prepare an individual for a career as a programmer analyst. Moreover, while [REDACTED] did find that the combination of the beneficiary's education and work experience are equivalent to a bachelor's degree in computer information systems, this evaluation does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). In order to qualify under this criterion, the evaluation must be based solely upon the beneficiary's foreign degree. For all of these reasons, [REDACTED] evaluation does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

The record does not demonstrate, nor has the petitioner contended, that the beneficiary holds an unrestricted state license, registration or certification to practice the specialty occupation, so he does not qualify under the third criterion, either.

The fourth criterion, set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), requires a demonstration that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty. Thus, it is under this criterion that the petitioner must classify the beneficiary's combination of education and work experience. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree is 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.

The beneficiary does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), as there has been no demonstration that ██████ possesses the authority to grant college-level credit for training and/or experience in a computer-related field at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience in a computer-related field. Although ██████ states that he possesses such authority "[b]ecause of the positions I hold at Mercy College, Baruch College of the City University of New York and the Stern School of Business of the New York University," he submits no evidence beyond his assertions that (1) he possess the authority to grant college-level credit for training and/or experience in a computer-related field at an accredited college or university; and (2) that an institution at which he is employed has a program for granting credit based on an individual's training and/or work experience in a computer-related field. 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)). For all of these reasons, Dr. Jelen's evaluation fails to establish that the beneficiary is qualified to perform the duties of the proposed position under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).³

No evidence has been submitted to establish, nor has counsel contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), which requires that the beneficiary submit 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 The AAO also finds ██████ evaluation unconvincing on another ground, as the record fails to establish that he is qualified to opine on the beneficiary's qualifications. Although the evaluation states that ██████ resume is "attached," his resume is not contained in the record of proceeding. His expertise to opine on the subject matter at hand, therefore, has not been established.

Nor does the beneficiary satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). The AAO incorporates here by reference its previous discussion regarding the deficiencies of [REDACTED] evaluation as it related to establishing eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). The beneficiary is unqualified under this criterion for the same reasons.

No evidence has been submitted to establish, nor has the petitioner contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), which requires that the beneficiary submit 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.

Finally, the AAO turns to the fifth criterion. When 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. 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 occupation⁴;
- (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.

⁴ *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 any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

Although the record contains evidence regarding the beneficiary's previous work experience, that evidence is insufficient to establish (1) that such work experience included the theoretical and practical application of specialized knowledge required by the specialty; (2) that it was gained while working with peers, supervisors, or subordinates who held a bachelor's degree or its equivalent in the field; and (3) that the beneficiary achieved recognition of expertise in the field as evidenced by at least one of the five types of documentation delineated in sections (i), (ii), (iii), (iv), or (v) of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Accordingly, the beneficiary does not qualify under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1)(2)(3)(4), or (5), and therefore by extension does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). The petitioner, therefore, has failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation.

Accordingly, the AAO agrees with the director's decision to revoke approval of the petition.

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. Approval of the petition is revoked.