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Office of Administrative Appeals MS 2090
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FILE: WAC 08 150 51954 Office: CALIFORNIA SERVICE CENTER Date:

FEB 03 2010

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.

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).

Perry Rhew
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 appeal will be dismissed. The petition will be denied.

The petitioner is an SAP services corporation that seeks to employ the beneficiary as a computer software engineer (SAP Systems). 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 failed to demonstrate that the beneficiary is qualified in 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 supporting documentation. The AAO reviewed the record in its entirety before reaching its decision.

In the petitioner's March 18, 2008 letter submitted in support of the petition, the petitioner states that the proffered software engineer position requires at least a bachelor's degree in engineering, computer applications or a related field. The petitioner writes, "All employees working at the level of Computer Software Engineer (SAP Systems) in our company have a Bachelors [sic] degree or higher in Engineering, Computer Applications or a related field."

The petitioner also submitted copies of the beneficiary's education documents and employment letters along with a credential evaluation that states the beneficiary's education is equivalent to a four-year bachelor's degree in business administration with a concentration in accounting and marketing management from an accredited college or university in the United States.

In an RFE, the director requested additional information from the petitioner to establish that the beneficiary qualifies to perform services in the proffered specialty occupation.

In response to the RFE, counsel for the petitioner provided an evaluation report completed by Dr. [REDACTED] and Chairman of the Department of Decision Sciences & Information Systems at Florida International University, along with an advisory opinion report completed by [REDACTED] of [REDACTED], and the beneficiary's curriculum vitae and job verification letters. The report from [REDACTED] states that the beneficiary's work experience together with his education are equivalent to a U.S. bachelor's degree in management information systems awarded by a regionally accredited university in the United States. The report from [REDACTED] states that the proffered position requires the beneficiary to hold a minimum of a U.S. bachelor's degree or equivalent in management information systems or related field awarded by a regionally accredited university in the United States.

The director denied the petition on the basis that the petitioner had not established that the beneficiary is qualified in a specialty occupation by virtue of possessing a baccalaureate degree or equivalent in a specific field of study which is clearly related to the position being offered.

On appeal, counsel provides an evaluation report from the Foundation of International Services (FIS) together with an expert opinion letter from [REDACTED] Department of Computing Sciences at Seattle Pacific University (SPU) in Seattle, Washington, and a letter from [REDACTED] of Academic Affairs at SPU, in support of counsel's assertion that the beneficiary's education and professional work experience are equivalent to a U.S. bachelor's degree in management information systems.

The AAO affirms the director's finding that the petitioner did not submit sufficient documentation to show that the beneficiary qualifies to perform services in a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and 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 accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5):

For purposes of determining equivalency to a baccalaureate degree in the specialty, 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 occupation;

(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 beneficiary does not hold a U.S. degree and his foreign education has not been determined to be the equivalent of a U.S. degree in computer science, computer information systems, or a closely related field.¹ Instead, it has been found to be the equivalent to a bachelor's degree in business administration with a concentration in accounting and marketing management. Therefore, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), in order for the beneficiary to qualify for a specialty occupation requiring a degree in computer science, computer information systems, or a closely related field, the record must demonstrate that he has education, specialized training, and/or progressively responsible experience equivalent to a U.S. baccalaureate or higher degree in computer science, computer information systems, or a closely related field, as well as recognition of his expertise through progressively responsible positions directly related to this specialty.

As discussed above, in response to the RFE, the petitioner provided a credential evaluation written by [REDACTED] writing on behalf of [REDACTED], stating that the beneficiary's education and experience amount to the equivalent of a U.S. bachelor's degree in management information systems awarded by a regionally accredited university in the United States. [REDACTED] states that she has advisory authority to grant college-level credit for training and/or experience in the Department of Decision Sciences and Information Systems, College of Business Administration at Florida International University.

The AAO finds that the evaluation from [REDACTED] together with the supporting documentation submitted, does not meet the standard described in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) as no documentation was submitted demonstrating that [REDACTED] has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university that has a program for granting such credit based on an individual's training and/or work experience, as required under the regulation.

With respect to the documentation provided on appeal, the credential evaluation submitted, which is based on both the beneficiary's academic background and work experience, did not demonstrate that the beneficiary qualifies to perform services in a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C) because the record also does not contain evidence that [REDACTED] is an official

¹ It is noted that, although it appears that the director determined in this specific case that the proffered position of Computer Software Engineer (SAP Systems) is a specialty occupation, a review of the U.S. Department of Labor's *Occupational Outlook Handbook* (hereinafter the *Handbook*) indicates that this position is generally not a specialty occupation as it does not normally require a U.S. bachelor's or higher degree in a specific specialty. See Bureau of Labor Statistics, U.S. Department of Labor, *Handbook*, 2010-11 Edition, "Computer Software Engineers and Computer Programmers," <<http://www.bls.gov/oco/ocos303.htm>> (accessed January 20, 2010). That said, without reviewing or commenting on the director's specialty occupation determination in this matter, it is further noted that the *Handbook* states that systems software engineers often study computer science or computer information systems. Therefore, if such a position is found to be a specialty occupation, it must be concluded that the degree required to perform the duties of this position would be a U.S. bachelor's or higher degree in computer science, computer information systems, or a closely related field.

who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university that has a program for granting such credit based on an individual's training and/or work experience, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D).

The appeal includes a letter from the SPU Registrar, dated July 25, 2008, who states that SPU faculty have the authority to grant credit “for training or experience both in the areas of training and more generally in general education and university degree requirements for our academic program.” However, the letter does not state that SPU faculty have the authority to grant college-level credit for “work” experience, nor that SPU has a program for granting the type of credit discussed by ██████████ ██████████ in his letter based on work experience. Thus, the evaluator's conclusion is not supported by the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D). Counsel on appeal also submits a letter from ██████████ ██████████ for Academic Affairs, dated July 12, 2004. However, as this letter predates the evaluation by more than a year, its accuracy and applicability at the time of the evaluation is not established. Moreover, this letter from ██████████ also does not state that SPU has a program for granting such credit based on an individual's work experience.

Aside from the decisive fact that the evidence of record does not establish ██████████ as competent under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) to evaluate training and/or experience, the AAO finds that the content of his evaluation of the beneficiary's experience would merit no weight even if ██████████ ██████████ were qualified under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). ██████████ basically summarizes the skeletal letters of the beneficiary's former employers, which describe the beneficiary's experience only in generalized and generic terms, and he then concludes, without analysis, that “all of these duties and responsibilities are representative of standard requirements for employment positions in the management information systems field, and it is apparent that [the beneficiary] has excelled and moved into progressively more responsible employment positions during his career.” As this evaluation does not establish a substantive basis for its conclusion, it would have no probative value even if it were rendered by an official qualified under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), USCIS may determine that the beneficiary has the equivalent of a degree in management information systems if he has a combination of education, specialized training, and/or work experience in areas related to this specialty. The evaluation on record is not supported by specific evidence. As indicated above, the letters from the beneficiary's former employers do not contain enough detail to determine how many years of experience the beneficiary has in management information systems, and whether this experience was gained while working with peers, supervisors, and subordinates who have a degree or its equivalent in management information systems, or a related field. Finally, the record lacks the required showing of the beneficiary's expertise in management information systems or a related field. The evidence does not establish that the beneficiary is qualified to perform in a specialty occupation that requires management information systems or a related field.

For the reasons related in the preceding discussion, the AAO affirms the director's decision that the beneficiary is not qualified to perform the duties of a specialty occupation. Accordingly, the AAO shall not disturb the director's denial 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. The petition is denied.