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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



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

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[REDACTED]

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER

Date:

NOV 08 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:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The director of the 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 consulting and development company that claims to have 34 employees. It seeks to employ the beneficiary as a programmer analyst 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 concluding that the petitioner failed to establish that the beneficiary is qualified to perform services in a specialty occupation.

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

First, the AAO will examine whether the petitioner demonstrated 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.

Regarding the proffered position, the petitioner states that it is seeking a programmer analyst who will be responsible for both systems analysis and programming. In the petitioner's letter of March 31, 2008, the petitioner states that the skills required for the person who fills the proffered position "[c]an be acquired through successful pursuit of at least a Bachelors degree in Computer Science, a relevant field of Engineering, or the equivalent in education and experience." The credential evaluation submitted by the petitioner, which was written by [REDACTED] stated that the beneficiary has the equivalent of a U.S. Bachelor of Science Degree in Computer Information Systems through a combination of education and experience.

On July 24, 2008, USCIS issued an RFE, stating that the credential evaluation submitted was not acceptable because evidence was not provided that the evaluator has the authority to grant college-level credit for training and/or experience. The RFE therefore requested that the petitioner submit an acceptable evaluation.

In response, the petitioner submitted a copy of the same evaluation from [REDACTED] that was submitted with the petition together with the evaluator's resume. The resume states that [REDACTED] is a [REDACTED] at the School of Business, [REDACTED]. However, no documentation was submitted to demonstrate that [REDACTED] 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

The petition was denied on October 3, 2008.

On appeal, counsel for the petitioner has provided a letter from [REDACTED]. Nowhere does [REDACTED] demonstrate that he has the authority to grant college-level credit for training and/or experience. Therefore, the petitioner has failed to demonstrate that the credential evaluation prepared by Professor Samanta qualifies the beneficiary to perform services in a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C).

Additionally, counsel for the petitioner has also submitted a new evaluation on appeal from [REDACTED] Evaluations and Consulting, which was written by [REDACTED]. This evaluation states that the beneficiary has the equivalent of a U.S. Bachelor of Science degree in Mechanical Engineering based on his foreign education alone as well as the equivalent of a U.S. Bachelor of Science degree in Computer Information Systems based on a combination of his foreign education and experience.

The beneficiary does not hold a U.S. degree and his four-year Indian degree has not been determined to be the equivalent of a U.S. degree in computer science or a computer-related engineering field, as was required by the petitioner. Instead, it has been found to be equivalent to a bachelor's degree in mechanical engineering. Further, the transcripts indicate that the beneficiary only took a few computer-related courses towards his degree. 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 engineering or a 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 a computer-related field, as well as

recognition of his expertise through progressively responsible positions directly related to this specialty.

As stated above, on appeal counsel for the petitioner has provided a credential evaluation written by [REDACTED] of Management Information Systems and Business Administration at the Jersey City Campus of the University of [REDACTED] College of Undergraduate Business and Management, writing on behalf of [REDACTED] Evaluations and Consulting, which states that the beneficiary's education and experience amount to the equivalent of a U.S. bachelor's degree in computer information systems. Although a resume for [REDACTED] was submitted, no documentation was provided from [REDACTED] demonstrating that he has the authority to grant credit for training and/or work experience 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. Therefore, the evaluation does not meet the standard of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

Aside from the decisive fact that the evidence of record does not establish [REDACTED] as competent under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) to evaluate experience, the AAO finds that the content of his evaluation of the beneficiary's experience would merit no weight even if Professor Jelen were qualified under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). [REDACTED] basically summarizes the letters of the beneficiary's former employers, most of which describe the beneficiary's experience only in generalized and generic terms, and he then concludes, without analysis, that the "responsibilities handled by [the beneficiary] throughout his career are indicative of Bachelor's-level coursework in Computer Information Systems and related subjects." Only one of the beneficiary's experience letters was written in more detail by a supervisor and this letter only documents just over one year of work experience and does not indicate whether the experience was gained while working with peers, supervisors, and subordinates who have a degree or its equivalent in a computer-related field. As [REDACTED] 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 computer information systems if he has a combination of education, specialized training, and/or work experience in areas related to this claimed specialty. As stated above, the evaluation on record is not supported by specific evidence. None of the letters from the beneficiary's former employers contain enough detail to determine how many years of experience the beneficiary has in computer information systems, and whether this experience was gained while working with peers, supervisors, and subordinates who have a degree or its equivalent in a computer-related field. Finally, the record lacks the required showing of the beneficiary's expertise in a computer-related field. The evidence does not establish that the beneficiary is qualified to perform a specialty occupation.

The AAO therefore affirms the director's decision that the beneficiary is not qualified to perform the duties of a specialty occupation requiring at least a bachelor's degree or the equivalent in a computer-related field. Accordingly, the AAO shall not disturb the director's denial of the petition.

The AAO further notes, beyond the decision of the director, that even if the petitioner could demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation requiring at least a bachelor's degree or the equivalent in a computer-related occupation, the petitioner has not submitted sufficient evidence to demonstrate that the proffered position is a specialty occupation. In the petitioner's letter dated March 31, 2008, the petitioner states that it provides computer consulting services. Therefore, the AAO finds that it is likely that the petitioner assigns its programmer analysts out to third-party client sites. Consequently, should the petitioner decide to file another petition on behalf of the beneficiary to work as a programmer analyst, the petitioner will need to provide additional evidence to demonstrate that the proffered position is a specialty occupation.

The AAO notes that, as recognized by the court in *Defensor v. Meissner*, 201 F.3d 384, 387-388 (5th Cir. 2000), where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. 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. *Id.* Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work. *Id.* Therefore, the petitioner would have to provide additional documentation regarding the work the beneficiary would perform on behalf of other entities, which could include copies of contracts, statements of work, etc.

Moreover, even if the petitioner could demonstrate that the beneficiary would work as a programmer analyst, The 2010-11 online edition of the *Handbook's* section on computer systems analysts reads, in pertinent part:

In some organizations, programmer-analysts design and update the software that runs a computer. They also create custom applications tailored to their organization's tasks. Because they are responsible for both programming and systems analysis, these workers must be proficient in both areas. (A separate section on computer software engineers and computer programmers appears elsewhere in the Handbook.) As this dual proficiency becomes more common, analysts are increasingly working with databases, object-oriented programming languages, client-server applications, and multimedia and Internet technology.

\* \* \*

[W]hen hiring computer systems analysts, employers usually prefer applicants who have at least a bachelor's degree. For more technically complex jobs, people with graduate degrees are preferred. For jobs in a technical or scientific environment, employers often seek applicants who have at least a bachelor's degree in a technical field, such as computer science, information science, applied mathematics, engineering, or the physical sciences. 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.

Despite the preference for technical degrees, however, people who have degrees in other areas may find employment as systems analysts if they also have technical skills. Courses in computer science or related subjects combined with practical experience can qualify people for some jobs in the occupation. . . .

Therefore, the *Handbook's* information on educational requirements in the programmer analyst occupation indicates that a bachelor's or higher degree, or the equivalent, in a specific specialty is not a normal minimum entry requirement for this occupational category. Rather, the occupation accommodates a wide spectrum of educational credentials.

As evident above, the information in the *Handbook* does not indicate that programmer analyst positions normally require at least a bachelor's degree in a specific specialty. While the *Handbook* indicates that a bachelor's degree level of education in a specific specialty may be preferred for particular positions, insufficient evidence was provided regarding the particular position here proffered to demonstrate requirements for the theoretical and practical application of such a level of highly specialized computer-related knowledge.

Therefore, even if the petitioner could demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation requiring at least a bachelor's degree in a computer-related field, or its equivalent, the petitioner would still have to submit additional evidence to prove that the proffered position is a specialty occupation in accordance with the discussion above.

The appeal will be dismissed and the petition denied. 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.

**ORDER:** The appeal is dismissed. The petition is denied.