

(b)(6)



U.S. Citizenship
and Immigration
Services



DATE: **AUG 08 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Elizabeth McCormack".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will remain denied.

The petitioner describes itself as a provider of "IT & engineering services; marketing/support of [REDACTED]" It seeks to employ the beneficiary as a systems engineer and to classify him 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 on the ground that the petitioner failed to establish 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 petition and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

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 to perform services in a specialty occupation must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (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 are 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.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite license or, if none is required, that he or she has completed a degree in the specialty that the occupation requires. Alternatively, if a license is not required and if the beneficiary does not possess the required U.S. degree or its foreign degree equivalent, the petitioner must show that the beneficiary possesses both (1) education, specialized training, and/or progressively responsible experience in the specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The petitioner filed its Form I-129, Petition for a Nonimmigrant Worker, on April 17, 2013. As evidence that the beneficiary was qualified to perform services in a specialty occupation based on his education, the petitioner submitted copies of the beneficiary's academic records which show that he earned the following degrees in India:

- A Bachelor of Computer Applications from [REDACTED] a part of [REDACTED] dated October 25, 2008, following a three-year degree program that was completed in May 2004.
- A Master of Business Administration from [REDACTED] dated April 25, 2012, following a four-semester degree program that was completed in March 2011.

In response to a Request for Evidence (RFE) issued by the director on June 5, 2013, the petitioner submitted an evaluation of the U.S. equivalence of the beneficiary's education, dated

July 11, 2013, from [REDACTED]. According to the [REDACTED] evaluation, the beneficiary's Bachelor of Computer Applications is equivalent to three years of undergraduate coursework in that field at a U.S. college or university, and his Master of Business Administration is equivalent to a U.S. bachelor's degree in business administration and a short master's degree in business administration. In combination, according to [REDACTED] the beneficiary's two degrees are equivalent to a Bachelor of Science in Business Administration and Computer Applications, and a short Master of Science in Business Administration, from an accredited U.S. university.

On September 24, 2013, the director denied the petition. In her decision the director noted that the requirement of a baccalaureate or higher degree in the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(C) has been interpreted in the case law as meaning the degree must be in a specific field of study directly related to, and a prerequisite for entry into, the specialty occupation. A degree in a general field of study not directly related to the specialty occupation, or in an unrelated field of study, is not sufficient to qualify a beneficiary to perform services in the specialty occupation. Turning to the [REDACTED] evaluation of the beneficiary's educational credentials, the director stated that the evaluation rated the beneficiary's Indian degrees as equivalent to a U.S. bachelor of science in business administration, a general degree which is insufficient to qualify the beneficiary for a specialty occupation absent a specific course of study directly related to the specialty occupation. Based on the evidence of record, the director determined that the duties of the job offered did not require a specific degree in business administration,¹ that the beneficiary did not specialize in a field of study directly related to the specialty occupation, and that the beneficiary's academic coursework was not a realistic prerequisite for entry into the position of systems engineer. After noting that the beneficiary's course of study in the field of computer information systems was only three years, the director concluded that the petitioner failed to show that the beneficiary qualified to perform the duties of a specialty occupation based on his education. The director also noted that the petitioner submitted no evidence that the beneficiary qualified for a specialty occupation based on a combination of education, specialized training and/or progressively responsible experience which is equivalent to a U.S. baccalaureate or higher degree in the specialty occupation, despite being requested to do so in the RFE.

The petitioner filed a timely appeal, asserting that the director was factually incorrect in her reading of the [REDACTED] educational equivalency evaluation. The petitioner contends that the director "mis-read the evaluation" in finding that it was limited to the beneficiary's business administration coursework because the evaluation actually concluded that the U.S. equivalence of the beneficiary's coursework was a "Bachelor of Science in Business Administration **and Computer Applications** and a short [MBA]" (emphasis in the original). In support of the appeal the petitioner submits a letter from [REDACTED], the author of the [REDACTED] evaluation, dated

¹ The director's statement that the duties of the position do not require a degree in a specific area of business administration is a finding that the position is not a specialty occupation. The director did not further analyze whether the position is so complex or unique that the performance of the duties requires a degree in a specific specialty. This decision will analyze only whether the beneficiary is qualified to perform the services of a specialty occupation. Because the director's decision will be affirmed on this ground, we will not discuss whether the position requires a degree in a specific specialty.

October 2, 2013. Ms. [REDACTED] states that her intention was to rate the beneficiary's three years of study in computer applications plus two years of study in business administration, which included courses in the area of management information systems, as equivalent to a double major in the fields of business administration and computer applications. We are persuaded that the petitioner's interpretation of the [REDACTED] evaluation, supported by the letter from its author, is correct.

However, we are not persuaded that the conclusion of the [REDACTED] evaluation with regard to the U.S. equivalency of the beneficiary's five years of university education in India is correct – in particular with regard to the computer applications component. The beneficiary has a three-year bachelor's degree in computer applications from an Indian university, which the [REDACTED] evaluation rates as equivalent to three years of undergraduate coursework in that field at a U.S. college or university. The petitioner does not dispute this part of the [REDACTED] evaluation, which also accords with the credential advice of the Educational Database on Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), which we consider to be a credible source of information about the U.S. equivalency of foreign degrees.² According to EDGE a three-year bachelor of computer applications in India is comparable to three years of university study in the United States. We note that a bachelor's degree in the United States is generally found to require four years of education. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Comm'r 1977). The beneficiary also has a four-semester master of business administration from an Indian university, which the [REDACTED] evaluation rates as equivalent to a bachelor's degree in business administration and a short master's degree in business administration. According to EDGE, a two-year master of business administration following a three-year bachelor's degree in India is comparable to a bachelor's degree in the United States. This credential advice accords with the [REDACTED] evaluation insofar as it rates the beneficiary's two-year master of business administration as equivalent to a U.S. bachelor's degree in business administration. The [REDACTED] evaluation then concludes, with no substantive analysis, that the beneficiary not only has the equivalent of a U.S. bachelor's degree in business administration, but also has the equivalent of a U.S. bachelor's degree in computer applications and a short master's degree in business administration. We will discuss these conclusions separately.

² According to its website, AACRAO is “a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries.” <http://www.aacrao.org/About-AACRAO.aspx>. Its mission “is to serve and advance higher education by providing leadership in academic and enrollment services.” *Id.* EDGE is “a web-based resource for the evaluation of foreign educational credentials.” <http://edge.aacrao.org/info.php>. Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials.² If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies. In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision.

The beneficiary's credential in computer applications is a three-year degree from [REDACTED]. In the appeal brief the petitioner cites six additional courses in the field of computer science which the beneficiary took during his business administration studies at [REDACTED]. The beneficiary's transcripts confirm that he took six computer-related courses among the 30 courses he completed for his Master of Business Administration degree.³ These computer courses comprised only 20% of the beneficiary's coursework in his two-year degree program. Thus, they amounted to less than one semester of coursework. Even if the computer courses were to be considered separate and apart from the business administration degree program in which they were earned, the petitioner has not explained how less than a semester's worth of such courses amounts to the full academic year of additional computer-related coursework the beneficiary would need to combine with his degree from [REDACTED] to reach the four-year threshold of a U.S. equivalent bachelor's degree in the field of computer applications.

Ms. [REDACTED] failed to remedy this shortcoming in her letter of October 2, 2013, explaining the [REDACTED] evaluation. According to Ms. [REDACTED] the beneficiary's "graduate level coursework in the area of Management Information Systems" during his business administration studies, combined with his three-year degree in computer applications, was sufficient to elevate the U.S. equivalence of his Indian education in the field of computer applications to the baccalaureate level. Ms. [REDACTED] offers no rationale for this conclusion. She does not identify or analyze the computer-related courses in the beneficiary's business administration degree program. Nor does she explain how less than one semester of computer-related courses at [REDACTED] elevates the beneficiary's three-year degree in computer applications to the equivalent of a U.S. bachelor's degree in the field. Thus, Ms. [REDACTED] fails to substantiate her claim that the six courses at [REDACTED] combined with the beneficiary's three years of undergraduate study in the field of computer applications are equivalent of a U.S. bachelor's degree in computer applications as a dual major complement to his U.S. equivalent bachelor of business administration. The [REDACTED] evaluation is conclusory and does not explain the underpinnings for its U.S. equivalence result.

Furthermore, we are unable to discern from the beneficiary's transcripts, or elsewhere in the record, that the beneficiary's combined coursework from his five years of university study incorporates, or equates to, a specialty in business administration. The [REDACTED] evaluation makes no claim that the beneficiary's education includes a particular specialty in the field of business administration.

Nor does Ms. [REDACTED] offer any rationale for her claim that the beneficiary's three-year degree in computer applications and his two-year degree in business administration are equivalent to a "short Master of Science in Business Administration" from an accredited university in the United States. As a definitional matter, Ms. [REDACTED] does not explain what she means by a "short" master's degree in business administration. Furthermore, Ms. [REDACTED] does not analyze any of the beneficiary's coursework in business administration and does not explain why its U.S. equivalence exceeds the baccalaureate level that EDGE ascribes to a two-year master's degree in that field from an Indian university. As stated above, the [REDACTED] evaluation is conclusory and does not explain the underpinnings for its U.S. equivalence result.

³ The six computer courses were (1) Workshop on Computers for Management, (2) Workshop on Information Technology, (3) Programming C / C++, (4) Database Management Systems, (5) Software Engineering, and (6) Seminar on Management Information Systems.

Evaluations of a person's foreign education by credentials evaluation organizations are utilized by USCIS as advisory opinions only. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); *see also Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). In accord with the foregoing analysis, the AAO determines that the GCE evaluation authored by Susan Mabry has little probative value. It is not persuasive evidence that the beneficiary's educational credentials from India include the equivalent of a U.S. bachelor's degree in computer applications.

In accordance with the foregoing analysis, we conclude that the record fails to establish that the beneficiary is qualified to perform the services of a specialty occupation under the regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

The beneficiary does not qualify to perform the services of a specialty occupation under the regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C)(1) and (3) because he does not hold a U.S. baccalaureate or higher degree required by the specialty occupation and, as far as the record shows, no state license, registration or certification is required for him to practice the specialty occupation.

As for the final regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the petitioner states on appeal that no evidence of specialized training or work experience by the beneficiary has been submitted in this proceeding because, in the petitioner's judgment, such evidence was unnecessary in view of the beneficiary's educational credentials which [REDACTED] evaluated as equivalent to a U.S. bachelor's degree in computer applications.

Thus, the petitioner has not established that the beneficiary qualifies to perform the services of a specialty occupation under any of the regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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