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FILE: EAC 07 220 52909 Office: VERMONT SERVICE CENTER Date: APR 02 2009

IN RE: Petitioner:
Beneficiary:



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 or reopen, 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 consulting and development company that seeks to employ the beneficiary as a software engineer. 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 finding that the beneficiary is not qualified to perform a specialty occupation. On appeal, the petitioner submits Form I-290B with a letter and additional evidence.

Section 214(i)(1) of the Immigration and Nationality Act (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 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)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

United States Citizenship and Immigration Services (USCIS) interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (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 software engineer. Evidence of the beneficiary’s duties includes: the I-129 petition; the petitioner’s June 1, 2007 letter in support of the petition; and the petitioner’s response to the director’s request for evidence. According to the June 1, 2007 letter, the beneficiary, as a software engineer, “will be responsible for testing techniques and methodologies for different platforms and processes.” In addition, the petitioner stated:

Essential duties and responsibilities for maintaining quality assurance are – develop test plans & strategies, test code, test cases, test scripts and reports; review and setup test plan / environments; manage workflow on projects by establishing project scope & scheduling and meeting project deadlines; check for adequacy and completeness of test cases; and perform ad hoc testing and guide other member[s] of the team. He will also be responsible for writing functional requirements, technical specifications and testing documentations.

He will also be responsible for sustaining support to a broad and dispersed customer base in key business process areas to solve technical problems and ensure the technical feasibility of all business requirements.

The petitioner further indicated that a qualified candidate for the job would possess at a minimum a bachelor’s degree in computer science, business administration, math or a related discipline. It is noted that in this matter, the beneficiary’s degree is in electrical engineering.

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 states that the beneficiary is qualified for the position because, in addition to his two and one-half years of professional experience in the industry, he has completed one year of studies in computer related courses. The petitioner also submits additional evidence including an updated educational evaluation as well as recent job postings by the petitioner for the proffered position.

Upon review, the AAO concurs with the director’s finding that 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), an alien must meet one of the following criteria 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 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 beneficiary possesses a Master of Science in Electrical Engineering from Mississippi State University. In addition, he holds a Bachelor of Engineering in Instrumentation and Control from the Dharmsinh Desai Institute of Technology. Therefore, while the beneficiary holds a master's degree in electrical engineering from an accredited U.S. university and a foreign degree in engineering, neither degree is in the required specialty. 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.

On appeal, the petitioner submits an educational evaluation from American Evaluation and Translation Service (AETS), a credentials evaluation service. Therefore, the AAO will first review the evaluation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). The evaluation found that the beneficiary possessed the equivalent of a Bachelor of Science degree in Electrical Engineering. The evaluator further noted that the beneficiary had completed the U.S. equivalent of 12.0 credit hours in computer-related courses. However, the mere completion of 12.0 credit hours in computer-related courses is insufficient to establish that the beneficiary has the equivalent of a United States baccalaureate or higher degree in the specific specialty. As such, the evaluation submitted is of little evidentiary value and does not establish that the beneficiary is qualified to perform the duties of a specialty occupation.

The AAO now turns to the director's basis for denial, in which he determined that the record is insufficient for USCIS to establish that the beneficiary is qualified to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

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 occupation¹;
- (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;

¹ *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).

- (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.

As stated above, the record contains an evaluation of the beneficiary's education from AETS. The evaluator found the beneficiary's bachelor of engineering in instrumentation and control was the equivalent to a U.S. bachelor of science degree in electrical engineering. The evaluation also notes that the beneficiary completed 12.0 credit hours in computer-related courses. The record also contains three employment letters from [REDACTED] a company for whom the beneficiary was employed as a software engineer/programmer analyst from August 2005 to May 2007, as well as one certificate of participation in an intensive UNIX/C&C++ course in 2001.

The documentation does not establish equivalence to a baccalaureate degree in computer science or other computer-related field, as contemplated by The Department's of Labor's *Occupational Outlook Handbook* (the *Handbook*). Regarding the training typically required in this field, the *Handbook* states:

Most employers prefer applicants who have at least a bachelor's degree and broad knowledge of, and experience with, a variety of computer systems and technologies. The usual college major for applications software engineers is computer science or software engineering. Systems software engineers often study computer science or computer information systems. Graduate degrees are preferred for some of the more complex jobs. In 2006, about 80 percent of workers had a bachelor's degree or higher.²

The beneficiary's computer training certificate, issued on October 24, 2007 for a course allegedly completed in 2001, does not indicate the length of training or the scope of the subjects covered. Although the petitioner, in its appeal brief, alleges that this was a four-month course, no documentation to support this claim has been submitted. In addition, the petitioner did not submit any independent evidence to illustrate how these training certificates relate to the completion of a baccalaureate degree 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)).

The AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. The director, in the denial letter, noted that the beneficiary's claimed two years of experience was not supported by any documentation, such as letters from employers, testifying to the nature of the beneficiary's duties. In conclusion, the director noted that approximately two years of experience coupled with the lack of a degree in the specific specialty rendered it impossible to conclude that the beneficiary had the requisite qualifications.

As noted above, the petitioner submitted for the first time on appeal three letters from the petitioner's employer, [REDACTED] during this period. As described by each person writing on behalf of [REDACTED]

² *Occupational Outlook Handbook*, 2008-2009 Edition, at www.bls.gov/oco/ocos267.htm.

the beneficiary's duties did not appear to involve the theoretical and practical application of systems analysis. One employer claims that the beneficiary "used to participate in all job-related and team building activities," and claims that the beneficiary participated in software analysis. Another person claims that the beneficiary works as a Quality Assurance Analyst, yet provides virtually no details regarding the nature and scope of his duties in this position. Finally, the third writer identifies the beneficiary's job as a programmer analyst, and again states that his duties include software analysis and design. All three persons describe the beneficiary's duties generically; no specificity to the beneficiary's daily activities or his level of responsibility is provided. Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge, which in this case is software engineering. Furthermore, while the beneficiary appeared to have been working on a team, none of the writers indicate that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

On appeal, the petitioner contends that 3.0 credits earned during his master's degree studies applied to a thesis, and therefore should be counted toward computer-related education. The petitioner claims that these 3.0 credits, coupled with the beneficiary's 12.0 undergraduate credit hours in computer-related courses and with his two and one-half years of experience in the industry, should be considered as satisfactory for satisfying the qualifications requirements. The AAO disagrees.

While the AAO concurs with AETS's determination that the beneficiary took 12.0 credit hours of undergraduate computer-related courses, the petitioner provides no basis for his conclusion that 3.0 hours of the beneficiary's master's studies, during which he wrote a thesis pertaining to various programming languages, is the equivalent of one year of computer studies when combined with the 12.0 undergraduate credits. Moreover, the petitioner relies on "two and one-half years" of professional experience, which the AAO cannot determine. The record contains evidence of the beneficiary's employment at [REDACTED] from August 2005 to May 2007 (22 months), as well as a certificate attesting to the beneficiary's employment with [REDACTED] on a project from December 2001 to April 2002 (4 months). A total of 26 months of employment in the computer industry does not equal two and one-half years. Moreover, the nature of the beneficiary's duties and experience gained at these positions is not specified. 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. at 165.

The director also examined the beneficiary's hiring practices and employment history, and found that most employees who did not possess a bachelor's degree in computer science or a related field possessed between five and twelve years of experience in the information technology industry. The director concluded that the petitioner generally preferred long-term experience in the information technology sector to account for the lack of a degree in a computer related field, and found that the beneficiary's educational experience did not correspond to the practices. The AAO concurs.

Finally, there is insufficient evidence that the beneficiary has recognition of expertise. The AAO notes that the petitioner has failed to submit documentation that the beneficiary possesses expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation, and has further failed to submit evidence that the beneficiary is a member of a recognized foreign or United States association or society in the specialty occupation. Moreover, no published material by or about the alien in professional

publications, trade journals, books, or major newspapers is submitted, nor is there any evidence of achievements by the beneficiary which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the AAO does not find that the proffered position as described is a specialty occupation because the petitioner has not clearly defined the beneficiary's proposed duties. Moreover, the petitioner has no hiring history of requiring a degree in a specific specialty. The director incorrectly noted in the denial that no job postings had been submitted for the proffered position, although the record reflects that the petitioner submitted a job posting in response to the request for evidence. That posting, resubmitted on appeal, advertises the position of software engineer and requires simply a bachelor's degree from a four-year college or university in no specific specialty. However, as the AAO is dismissing the appeal on another ground, it will not examine this issue further.

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.