



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



PUBLIC COPY

File: EAC 98 154 51955

Office: Vermont Service Center

Date:

FEB 14 2000

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)

IN BEHALF OF PETITIONER:



Identifying information
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director of the Vermont Service Center. The matter is now before the Associate Commissioner on appeal. The appeal will be dismissed.

The petitioner, a data processing consulting firm, seeks to employ the beneficiary for three years as a computer programmer/analyst in the H-1B classification for specialty occupations. Finding that the beneficiary's degree included only two computer courses and that his proficiency extended only to operating Lotus 1-2-3, the director determined that the beneficiary did not qualify to perform services in a specialty occupation. The director denied the petition in a decision issued April 21, 1999 (denial). The petitioner appealed on May 6, 1999, and its new counsel submitted a motion to reopen/reconsider (brief).

The brief maintained that the beneficiary's Bachelor of Science in Commerce from [REDACTED] 1989 satisfied equivalency with a United States Bachelor of Business Administration. Counsel added evidence of vocational training in computer programming languages and computer science topics while employed one year during 1997.

Provisions of § 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(H)(i)(b), accord nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. The definition in § 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), describes a "specialty occupation" as one which requires theoretical and practical application of a body of highly specialized knowledge and 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.

Regulations in 8 C.F.R. 214.2(h)(4)(ii) define the term specialty occupation as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation in such fields of human endeavor, including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

The Report of Evaluation of Educational Credentials (report) evaluated the foreign degree as equivalent to a United States

bachelor's in business administration from an accredited college or university. 8 C.F.R. 214.2(h)(4)(iii)(C)(2). The petitioner surmised that the proffered position was a specialty occupation if the employer normally required a degree as the minimum requirement to enter it. 8 C.F.R. 214.2(h)(4)(iii)(A)(3).

The petitioner's brief on appeal, at 1, contended,

In the petition, Petitioner stated that the minimum requirements for the position offered are at least a Bachelor's degree or equivalent in Mathematics, Computer Science, Physics, Business Administration/Commerce or Engineering....

In short, the petitioner decided which baccalaureate qualified the beneficiary. On the other hand, explicit statutes exact the beneficiary's completion of a bachelor's or higher degree in the specific specialty (or its equivalent) as the minimum for the beneficiary's entry into the specialty occupation in the United States. See § 214(i)(2)(B) of the Act, 8 U.S.C. 1184(i)(2)(B), incorporating § 214(i)(1)(B), 8 U.S.C. 1184(i)(1)(B).

The report did not establish the equivalence of the business administration degree for the specific specialty of computer programmer and analyst. As the denial determined, the record showed two computer courses relevant to a degree in the specific specialty, though it satisfied equivalency for a business administration baccalaureate.

The petitioner sought to credit the beneficiary's 1997 training and experience as equivalent to a degree in the specialty occupation. It offered a package of computer courses, operating Lotus 1-2-3, and one year's employment. 8 C.F.R. 214.2(h)(4)(iii)(C)(4). That rule applies only if the petitioner demonstrates the recognition of the beneficiary's expertise through progressively responsible positions directly related to the specialty. This record revealed an initial stage only of the beneficiary's career in the specialty occupation. He lacked recognition of his expertise in the specific specialty. 8 C.F.R. 214.2(h)(4)(iii)(C)(4). Other provisions give equivalence for education, knowledge, competence and practice in the specialty occupation only. 8 C.F.R. 214.2(h)(4)(iii)(D)(5). No prescribed authorities or indicia validated the recognition of his experience. 8 C.F.R. 214.2(h)(4)(iii)(D)(5)(i)-(v). No resumé amplified his experience. Almost ten years disconnected his experience from his degree.

The petition transmittal of April 28, 1998 described the proffered work at a high level of skill,

The Beneficiary will devote full time to formulating designs, making technical decisions, implementing and

maintaining sophisticated financial applications and designing and developing new database files. The Beneficiary will be involved in developing the requisite systems applications and programming functions....

The Department of Labor, Occupational Outlook Handbook, 1998-1999 edition ("Handbook"), at 111, Training, Other Qualifications, and Advancement," outlines several skills,

Computer hardware engineers generally require a bachelor's degree in computer engineering or electrical engineering, whereas software engineers are more likely to need a degree in computer science. For systems analyst or even database administrator positions, many employers seek applicants who have a bachelor's degree in computer science, information science, computer information systems, or data processing....

It is unnecessary to examine in detail whether the proffered position qualified as a specialty occupation. The beneficiary did not have a baccalaureate in the specific specialty which the petition named. The Handbook designates, and the statute commands for the specific specialty, quite a different degree than his.

Counsel has cited unpublished decisions of the Service in support of the appeal. Their relevance is limited. One related to the wording of a job description as an indicator of the position as a specialty occupation. None interpreted the statute which exacts a degree in the specialty occupation. See § 214(i)(1)(B) of the Act, 8 U.S.C. 1184(i)(1)(B). This instance depended on baccalaureate qualifications of the beneficiary. Service decisions designated as binding precedents are published and made available to the public pursuant to 8 C.F.R. 103.3(c). Unpublished decisions are neither precedents nor binding.

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.