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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

File: EAC 99 257 50564 Office: VERMONT SERVICE CENTER Date: **JAN 14 2002**

IN RE: Petitioner: [redacted]
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: SELF-REPRESENTED

PUBLIC COPY

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a company involved in computer consulting, training, software development, networking and marketing with eleven employees and an estimated gross income of $1,000,000. It seeks to employ the beneficiary as a junior computer programmer analyst for a three-year period. The director denied the petition finding that the petitioner had failed to establish that the position qualified as a specialty occupation.

On appeal, the petitioner submits a brief and argues that the position is a specialty occupation.

The regulation at 8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

> an occupation which requires theoretical and practical application of a body of highly specialized knowledge in 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.

Further, the regulation at 8 C.F.R. 214.2(h)(4)(iii)(A) that a petitioner could qualify the offered position as a specialty occupation if the petitioner could establish that:

> 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.

On appeal, the petitioner has submitted a description of the duties of the position that indicates that the beneficiary will be required to prepare a database of Ayurvedic Medicine and its compositions with the database of selected diseases. The description of the duties of the position indicate that the beneficiary will be required to design, develop, analyze, test and implement the program. The beneficiary will also be required to research and prepare comparative data in the computer program. The petitioner asserts that the position requires a bachelor's degree in Ayurvedic Medicine and computer programming.

The record also contains an evaluation of the beneficiary's education and work experience performed by a professional credential evaluation service that indicates that the beneficiary has a bachelor's degree in Ayurvedic Medicine. However, the evaluation also indicates that Ayurvedic Medicine is not a course of study that is offered in the United States. Further, the evaluation provides that, based on the combination of the beneficiary's experience and education, the beneficiary has the equivalent of a bachelor's degree in computer science.

Upon review, the record as presently constitute does not establish that the proffered position qualifies as a specialty occupation and, as a result, the director's decision will not be disturbed.

Positions in the computer industry are not clearly defined, in part, due to the relative sophistication and fast growth of the industry. Generally, positions in that industry are considered to fall within several groups: engineers (who may design the actual hardware used in the computer systems); systems analysts (who may determine the needs of a process, select equipment, plan processing methods, and prepare specifications for programmers); and programmers (who, in turn, write instructions on programs for technicians).

The Service has found that the positions of systems engineer (and related engineering positions including designer), pure systems analyst, and programmer of computers used for scientific or engineering applications are considered to be within the professions, as contemplated by section 101(a)(32) of the Act. The positions of programmer of computers used for business applications and technician, on the other hand, normally require training commonly gained and widely available outside of college or university studies. They are, therefore, usually not considered to be a specialty occupation. (See the sections of the Department of Labor's Occupational Outlook Handbook, (Handbook), 2000-2001 edition, on electrical and electronics engineering, computer systems analysts, computer programmers, and computer service technicians. The Handbook at page 115 indicates that while a baccalaureate degree is usually required, a degree in a specialized area does not appear to be a requirement.

The petitioner has not submitted sufficient evidence establishing that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The petitioner has not distinguished the proffered position from other business related programming positions that do not require the attainment of a bachelor's degree in a specific specialty.

In addition, the petitioner has not established that the duties of the proffered position are of such complexity that a baccalaureate degree in a specific specialty, as distinguished from familiarity with programming or a less extensive education, is necessary for the successful completion of its duties. It has not been established that the duties of the position cannot be performed by an individual with a basic understanding of computer programming and a basic knowledge of Ayurvedic medicine.

Finally, the record does not establish that the petitioner has hired individuals with bachelor's degrees for this position in the past or that the degree requirement is common to the industry in parallel positions among similar organizations.

In view of the forgoing, it is concluded that the petitioner has not demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

While not addressed by the director in his decision, it has not been established that the beneficiary has a bachelor's degree or its equivalent in Computer Science.

The evaluation submitted by the petitioner indicates that, in the opinion of an independent credentials evaluator, the beneficiary's education, training, and experience is the equivalent of a bachelor's degree in Computer Science.

The regulation at 8 C.F.R. 214.2(h)(4)(iii)(D) describes the methods that a petitioner can use to establish that the beneficiary has the equivalent of a bachelor's degree. The regulation at 8 C.F.R. 214.2(h)(4)(iii)(D)(3) clearly indicates that evaluations performed by credential evaluators are limited solely to the beneficiary's educational achievements and are not to address the beneficiary's employment. Since the evaluation submitted by the petitioner considers the alien's employment history, it does not comport with the Service's regulations and is of little value in this proceeding.

Finally, the same regulation allows the Service to determine whether an alien's education and experience is the equivalent of a bachelor's degree. The record as presently constituted does not contain sufficient information relating to the beneficiary's past employment for the Service to make a determination that the beneficiary has the equivalent of a bachelor's degree.

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.