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FILE: SRC 02 156 52818 Office: TEXAS SERVICE CENTER Date: JUN 01 2004

IN RE: Petitioner:
Beneficiary



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director 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 corporation that describes itself as a treatment and spa consultancy group. In order to employ the beneficiary as a high level international beautician, 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 on two independent grounds, namely, that the petitioner had failed to establish that (1) the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A), and (2) the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C). On appeal, the petitioner essentially asserts that the evidence of record does not support the director's decision.

The petitioner's appeal is without merit. The AAO based this determination upon its review of the entire record, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B as annotated by the petitioner and the letters and documents that the petitioner submitted with the Form I-290B.

The specialty occupation issue shall be addressed first.

The evidence of record provides very little information about the proffered position and its duties, and the little information that is in the record is general and generic. Consequently, the record does not convey any substantial details about the specific tasks in which the beneficiary would be engaged.

The job offer letter submitted with the Form I-129 informed the beneficiary that "[her] responsibilities would include management of the beauty department which encompasses the daily operation and supervision of all the employees." One of the undated letters which the petitioner submitted in reply to the RFE asserted that the proffered position "specializes (on the labor department list code 1999) in skin and product control." The only other information that the letter provided about the proposed duties were these two sentences:

[The beneficiary] will be in charge of the company's product and control department. She will work 6 days per week which will include traveling where she will be responsible for Customer Relations, Marketing, and Office Management.

In her December 4, 2002 letter that is submitted on appeal, the beneficiary adds this general information about the position: "My duties will cover all aspects of the beautician/cosmetic trade, including, skin treatments (facials, massage, reflexology, aromatherapy, waxing, etc[.]), hair design, nails (both manicure and pedicure)."

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.

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.

Citizenship and Immigration Services (CIS) 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 decisive factor in any CIS determination on the specialty occupation issue is the evidence presented about the specific duties of the proffered position. In this proceeding, the evidence of record is too vague to establish that the specific duties would require the application of the highly specialized knowledge that is attained by or associated with at least a bachelor's degree, or the equivalent, in a specific specialty. Accordingly, the petitioner has failed to demonstrate that the proffered position is a specialty occupation.

Because it fails to illuminate the specific duties and also fails to demonstrate that they would require the type of highly specialized knowledge that is an essential element of a specialty occupation, the evidence of record does not establish that the proffered position is one that normally requires at least a baccalaureate or higher degree, or the equivalent, in a specific specialty. Accordingly, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). In this regard, it should be noted that beautician/cosmetic work does not normally require at least a baccalaureate or higher degree, or the equivalent, in a specific specialty. See, for example, the section “Barbers, Cosmetologists, and Other Personal Appearance Workers” at the Department of Labor's *Occupational Outlook Handbook*, which the AAO recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations. Furthermore, petitioner's statement that the position would involve customer relations, marketing, and office management is too general to have any evidentiary impact.

The record contains no evidence of an industry-wide degree requirement related to positions that are parallel to the one proffered here and found in organizations similar to the petitioner. Therefore, the petitioner has failed to establish that the proffered position meets the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next the evidence of record is too limited and general to demonstrate that the position and its associated duties are unique or especially complex or specialized. Therefore, the evidence does not establish either that the proffered position could only be performed by a person with at least a bachelor's degree in a specific specialty, or that the position requires the application of highly specialized knowledge that is usually associated with a baccalaureate or higher degree in a specific specialty. Therefore, the proffered position does not qualify as a specialty organization under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Finally, the petitioner provided no evidence to meet the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position.

In summary, the petitioner has failed to establish that the proffered position is a specialty occupation within the meaning of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). As discussed below, the petitioner has also failed to establish that the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C).

The evidence as to the beneficiary's qualifications is very limited. It consists mostly of diplomas and certificates that attest to the beneficiary's training in areas such as aesthetic treatments, advanced body treatments, aromatherapy, body therapy, reflexology, health and skin care, cosmetology, waxing, nail treatments, and skin treatments. Also, in a letter submitted with the Form I-129, the beneficiary asserted that she had "studied business administration, sales and marketing; had trained with a number of product houses that she named; and provides a number of "specialized treatments like reflexology, aromatherapy, MLD and Cold Glass Ball Treatment, besides facials, massage, manicures, pedicures, waxing, first aid, [and] lash and brow tinting." In her letter submitted on appeal, the beneficiary states that she is a "beautician by trade as well as a world renowned skin specialist" who is "duly qualified in the cosmetics, beauty, and health field and hold[s] a degree in the beauty and health profession." The only letter from an employer of the beneficiary just states the dates and locations of her employment with the Camelot Spa Treatment and Spa Consultancy Group. There is no documentary evidence of any college-degree courses.

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 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)(C), to qualify to perform services in a specialty occupation, an 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.

The record contains no evidence bearing on any of the first three sections. As related below, the caliber of the evidence that is relevant to section 4 is insignificant.

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 under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) 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.

The record is devoid of any evidence that would be appropriate for analysis under sections 1 through 4 of 8 C.F.R. § 214.2(h)(4)(iii)(D). This leaves only section 5.

When CIS 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;
- (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.

The training documents and the extremely slim documentation of the beneficiary's work history do not meet the requirement of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) that the record clearly demonstrate that "the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation" and 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."

Finally, there is no evidence relating to the type of professional recognition required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (i) to (v). Here it should be noted that the beneficiary's claim to be a world renowned skin specialist has no evidentiary value. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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).

In summary, the director was correct in denying the petition because (1) the proffered position does not meet the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A), and (2) the beneficiary is not qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C). Therefore, the director's decision shall not be disturbed.

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.