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U.S. Citizenship
and Immigration
Services



FILE: LIN 03 051 51591 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



OCT 29 2004

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:



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

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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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 medical transportation business that operates a number of "medivans" to transport handicapped individuals primarily in the northwest suburbs of Chicago. It seeks to employ the beneficiary as an economist. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel states that the evidence in the record demonstrates that the beneficiary holds a master's degree in geological engineering and relevant employment experience that qualify her for the specialty occupation. Counsel submits a second evaluation from the Foundation for International Services, Inc. and an academic opinion from a professor of the School of Business and Economics at Seattle Pacific University as supporting documentation.

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)(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 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 an economist. The petitioner indicated in its November 18, 2002 letter that a qualified candidate for the job would possess a bachelor's degree in accounting or an equivalent thereof.

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, counsel states that the beneficiary is qualified for the position because she holds the equivalent of a master's degree in geological engineering, and has 10 years of relevant employment experience. Counsel submits a copy of an evaluation from the Foundation for International Services, Inc. and an expert opinion letter from Dr. [REDACTED] Professor of Finance at Seattle Pacific University.

The record contains the following documentation pertaining to the beneficiary's qualifications:

- Diploma issued to the beneficiary on June 17, 1988, by Rostov State University, awarding her "professional competence of engineer-hydra-geologist";
- Evidence of computer training;
- Translation of employment letter, dated April 10, 2003, from the director of the Russian business, SLIK, who states, in part, that the beneficiary held the position of accountant from May 5, 1992 to September 1, 1994;
- Translation of employment letter, dated April 15, 2003, from the head of the Russian business, Firm TNT, who states, in part, that the beneficiary held the position of head accountant from December 2, 1995 to September 28, 1996;
- Translation of employment letter, undated, from the director of the Russian business, AKADEMIA, who states, in part, that the beneficiary held the position of accountant from October 1996 to November 1998;
- Translation of the employment letter, dated April 9, 2003, from the vice chairman of human resources of the Russian business, Material for Master, who states, in part, that the beneficiary held the position of head accountant from November 10, 1998 to June 28, 2002, with duties that included serving as head accountant until her promotion in September of 1999 to director of economics and development;
- Credentials evaluation, dated November 11, 2002, from the Foundation for International Services, concluding that the beneficiary's foreign degree is the equivalent of a U.S. master's degree in geological engineering, and the beneficiary's education and work experience are equivalent to a U.S. bachelor's degree in accounting;
- Credentials evaluation, dated July 16, 2003, from Dr. [REDACTED] Professor in the School of Business and Economics at Seattle Pacific University, concluding that the beneficiary's educational background and employment experience are equivalent to a bachelor's degree in economics from an accredited U.S. college or university; and

- Credentials evaluation, dated July 17, 2003, from the Foundation for International Services, concluding that the beneficiary's foreign degree is the equivalent of a U.S. master's degree in geological engineering, and, in accordance with Dr. [REDACTED] academic opinion, the beneficiary's education and work experience are equivalent to a U.S. bachelor's degree in economics.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree or higher in an economics-related field. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study, or a foreign degree determined to be equivalent to a baccalaureate degree from a U.S. college or university in the specialty occupation. 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, counsel submits a second evaluation, dated July 17, 2003, from the Foundation for International Services, Inc., a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary's foreign degree is the equivalent of a U.S. master's degree in geological engineering, and, in accordance with the academic opinion of Dr. [REDACTED] Professor in the School of Business and Economics at Seattle Pacific University, the beneficiary's education and work experience are equivalent to a U.S. bachelor's degree in economics. It is noted that this portion of the evaluator's conclusion conflicts with her evaluation, dated November 11, 2002, in which she concluded that the beneficiary's education and work experience were equivalent to a U.S. bachelor's degree in accounting. It is also noted that portions of both of

these evaluations are based upon the beneficiary's education, training and work experience. A credentials evaluation service, however, may not evaluate an alien's work experience or training; it can only evaluate educational credentials. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluator's comments and conclusions in both evaluations regarding the equivalency of the beneficiary's work experience and/or training, in combination with her educational background, carry no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

Counsel also submits an evaluation from Dr. [REDACTED] Professor in the School of Business and Economics at Seattle Pacific University, concluding that the beneficiary's educational background and employment experience are equivalent to a bachelor's degree in economics from an accredited U.S. college or university. Dr. [REDACTED] states, in part, that the beneficiary "has significant experience as both a head accountant and as a director of economics and development" and "much of this experience was gained by working with and leading trained economic professionals." Dr. [REDACTED] states further that the beneficiary has nine years of work experience "at significant levels in the organization in areas such as economic research and development, marketing research, accounting statement preparation, forecasting and computer modeling." Although Dr. [REDACTED] states that he has formed his opinion based upon the documents provided by counsel, he does not specifically state what documents he reviewed. It is assumed, however, that the documents reviewed by Dr. [REDACTED] include, in part, the previously listed letters of employment from the following Russian businesses: SLIK; Firm TNT; AKADEMIA; and Material for Master. The content of these letters, however, does not support Dr. [REDACTED] findings, as explained in the following discussion.

First of all, in the letter (translation) from the Russian company, SLIK, dated April 10, 2003, the director states that the beneficiary worked as an accountant from May 5, 1992 – September 1, 1994, and performed the following "initial" duties: "processing of raw data, conducting and filing journals-orders in assessing salaries, income gross and net, losses, and business expenses including materials on invoices and personnel." The director describes her duties from "October 199" as performing "monthly compilation of processing-sold journals and quarterly monthly payments to Tax department." The duties described here are similar to those of a bookkeeping, accounting, and auditing, clerk, whose duties include recording transactions, posting debits and credits, producing financial statements, as well as handling payroll and preparing invoices. See Department of Labor's *Occupational Outlook Handbook*, 2004-2005 edition, at page 437. Furthermore, there is no mention in the letter as to the specifics of this company, such as the nature of its business and its organizational hierarchy.

Secondly, in the letter from the Russian company, TNT, dated April 15, 2003, the "Head of the OK" states that the beneficiary worked as a head accountant from December 2, 1995 to September 28, 1996, and performed the following job functions: "conducting Accounting and Planning-economic department, quarter formal review and planning, accounting, work with tax inspectors, and other reviewing bodies, conducting and marketing support, research of the market, control of the finance law changes, organization of the financing and tax payments by the contractors, conducting current and perspective forecasting, economic planning." Although the writer indicates that the beneficiary worked as a "head accountant," again, no specifics are mentioned, such as the nature of the company's business or its organizational hierarchy.

Thirdly, in the undated letter (translation) from the Russian company, AKADEMIA, an "industrial-commercial firm," the director states that the beneficiary worked as "a head of accounting department" from October 1996 to November 1998, but does not provide a detailed description of her duties. He states further that the beneficiary was also assigned to manage the marketing department, but, again, he does not provide a

detailed description of her duties. Furthermore, although the company is described as an "industrial-commercial firm," the exact nature of the company's business is not described nor its organizational hierarchy.

Finally, in a letter from the Russian company, Material for Master, dated April 9, 2003, the vice chairman of human resources states that the beneficiary worked from November 10, 1998 to June 28, 2002, as a head accountant until she was promoted to the position of director of economics and development in September 1999. The writer further states that the beneficiary also became "a managing person in the department of marketing, supply and sales." Again, the beneficiary's specific duties are not clear, nor are the nature of the business and its organizational hierarchy described.

The record as it is presently constituted does not establish that the beneficiary's educational background and employment experience are equivalent to a bachelor's degree in economics from an accredited U.S. college or university. The documentation in the record does not corroborate Dr. [REDACTED] comment that the beneficiary "has nine years of experience at significant levels in the organization such as economic research and development, marketing research, accounting statement preparation, forecasting and computer modeling." As already discussed, some of the beneficiary's duties are related to bookkeeping activities. Furthermore, none of the writers of the employment letters provides a comprehensive description of the beneficiary's duties, nor do they provide any specifics of their respective companies. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Thus, the comments and conclusions of Dr. [REDACTED] regarding the equivalency of the beneficiary's work experience and/or training, in combination with her educational background, carry little weight in these proceedings.

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;

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).

- (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.

As stated previously, the evaluator from the Foundation for International Services, Inc. and Dr. [REDACTED] Professor of Finance from Seattle Pacific University both conclude that the beneficiary holds the equivalent of a U.S. master's degree in geological engineering. The record also contains four previously discussed employment letters and two computer-training certificates.

The documentation does not establish equivalence to a baccalaureate degree in economics or any related field. The deficiencies of the employment letters have already been discussed. Furthermore, although the evaluator from the Foundation for International Services, Inc. and Dr. [REDACTED] both mention the beneficiary's completion of two computer-training courses, the petitioner did not submit any independent evidence to illustrate how these training certificates relate to the completion of a baccalaureate degree in economics. *See 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. As described by each employer, the beneficiary's duties did not appear to involve the theoretical and practical application of economics. As discussed previously, one employer assigns bookkeeping duties to the beneficiary. All employers describe the beneficiary's duties generically; little specificity to the beneficiary's daily activities 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 economics. Furthermore, none of the employers indicates 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.

Finally, there is insufficient evidence that the beneficiary has recognition of expertise. The AAO notes that the evaluator from the Foundation for International Services, Inc. cannot be considered a "recognized authority" because she does not appear to possess expertise in the particular field of economics. It is noted that she first concluded that the beneficiary holds the equivalent of a baccalaureate degree in accounting and, in a subsequent evaluation, concluded that the beneficiary holds the equivalent of a baccalaureate degree in economics. Likewise, the professor from Seattle Pacific University cannot be considered a "recognized authority" because he did not specifically describe what materials he reviewed to reach his conclusions.

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.

Beyond the decision of the director, the AAO does not find that the proffered position is a specialty occupation because the petitioner has not sufficiently demonstrated that the proposed duties entail the level of

responsibility of an economist, a position that is utilized primarily by government agencies; scientific research and development firms; management, scientific, and technical consulting firms; banks and securities firms, and business, professional, labor, and political organizations. *See* Department of Labor's *Occupational Outlook Handbook*, 2004-2005 edition. In this case, the petitioner is a 10-employee medical transportation business that operates a number of "medivans" to transport handicapped individuals primarily in the northwest suburbs of Chicago. Furthermore, although the petitioner asserts that it is the largest, most experienced and competitive medical transportation and supply company in Illinois, that it has a team of economist and research professionals, and that the proffered position is slated to guide the petitioner's expansion, the petitioner did not provide any evidence in support of its assertions. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). For this additional reason, the petition may not be approved. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.